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Supreme Court, U.S.
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APPENDIX

In The

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1971

NO. 70-223

CENTRAL HARDWARE COMPANY,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,
Respondent,

and

RETAIL CLERKS UNION, LOCAL 725, RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL-CIO,
Intervenor.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 1, 1971

CERTIORARI GRANTED JANUARY 10, 1972

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United States Court of Appeals
For the Eighth Circuit

No. 20,199
(439 F.2d 1321)

Central Hardware Company,
Petitioner,
v.
National Labor Relations Board,
Respondent,
and
Retail Clerks Union, Local 725, Retail Clerks International Association, AFL-CIO,
Intervenor.

On Petition for Review and on Cross-Application for Enforcement of an Order of the National Labor Relations Board.

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

Date	Proceedings
1968	
Aug. 2	Charge filed in Case No. 25-CA-3214.
Oct. 18	Charge filed in Case No. 25-CA-3261.
Nov. 27	Acting Regional Director's order consolidating cases, complaint and notice of hearing, dated.
Dec. 5	Petitioner's answer.
1969	
Jan. 16	Acting Regional Director's amendment to consolidated complaint, dated.
Jan. 21	Petitioner's amendment to answer, dated.
Jan. 29	Hearing opened.
Feb. 6	Hearing closed.
June 23	Trial Examiner's decision, issued (together with his order correcting transcript attached).

July 22	General Counsel's limited exceptions to Trial Examiner's decision, received.
July 22	Petitioner's bill of exceptions and assignment and error to Trial Examiner's decision, received.
1970	
Mar. 4	Decision and Order issued by the National Labor Relations Board.
Mar. 12	Petition for Review filed in Eighth Circuit Court of Appeals.
May 1	Petition for Intervention granted.
1971	
Mar. 24	Decision issued by Eighth Circuit Court of Appeals.
Apr. 26	Petition for Rehearing Denied.
June 1	Petition for Certiorari filed in Supreme Court.
1972	
Jan. 10	Certiorari granted by Supreme Court.

CHARGE AGAINST EMPLOYER

(Filed Aug. 12, 1968)

Case No. 25-CA-3214
Date Filed August 21, 1968

1. Employer Against Whom Charge is Brought:

a. Name of Employer: Central Hardware Company.

b. Number of Workers Employed: 300.

c. Address of Establishment (Street and number, city, State, and ZIP code): 3801 North Shadeland and 4707 West 38th Street, Indianapolis, Indiana.

d. Employer Representative to Contact: George W. Reed, 4200 North Union Boulevard, St. Louis, Missouri.

e. Phone Number: EV 9-1000.

f. Type of Establishment: Retail Hardware Stores.

g. Identify Principal Product or Service: Hardware.

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), and subsections (1) and (3) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge:

On or about May 15, 1968, and continuing to date, the above named Employer, by its officers, agents and/or representatives has interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed in Section 7, of the Act, as amended.

On or about July 8, 1968, an employee of the above named Employer, Marilyn Ragle, who resides at 3917 Vinewood Avenue, Indianapolis, Indiana was suspended for 3 days because of her activities in behalf of Local No. 725.

On or about Aug. 16, 1968, an employee of the above named Employer, Rosita J. Squires, who resides at 6221 East 43rd Street, Indianapolis, Indiana was fired because of her activities on behalf of Local 725.

On or about August 1, 1968, the Employer by its officers, agents, and representatives assigned different lunch periods to Rosita Squires and other employees and by way of surveillance during such periods, interfered with employees' activities on behalf of Local No. 725.

3. Full name of Party Filing Charge: Retail Clerks Union Local No. 725.

4a. Address: 1520 East Riverside Drive, Indianapolis, Indiana 46202.

4b. Telephone No.: 635-2488.

5. Full name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit: Retail Clerks International Association, AFL-CIO.

6. Declaration:

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By CHARLES E. MERCER Director of Organizing
(Signature of representative or person filing charge) (Title, if any)

1520 East Riverside Drive 635-2488 August 21, 1968
(Address) (Telephone number) (Date)

CHARGE AGAINST EMPLOYER

(Filed October 18, 1968)

Case No. 25-CA-3261
Date Filed October 18, 1968

1. Employer Against Whom Charge Is Brought:

a. Name of Employer: Central Hardware Company.

b. Number of Workers Employed: 300.

c. Address of Establishment: 3801 North Shadeland and 4707 West 38th Street, Indianapolis, Indiana.

d. Employer Representative to Contact: George W. Reed, 4200 North Union Boulevard, St. Louis, Missouri.

e. Phone number: EV 9-1000.

f. Type of Establishment: Retail Hardware Stores.

g. Identify Principal Product or Service: Hardware.

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsection (1) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge:

On or about July 22, 1968, and continuing to date the above named Employer, by its officers, agents and employees embarked on a campaign to interfere, restrain and coerce its employees in the exercise of the rights guaranteed in Section 7 of the Act by causing the arrest of Mark Kappatanakas, a representative of Retail Clerks Union Local No. 725, a/w Retail Clerks International Association, AFL-CIO merely because he was present in the Employer's parking lot, used by the public, and also by threatening to cause the arrest of agents of said labor organization merely because they were engaged in organizational activities in behalf of said labor organization.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge: Retail Clerks Union Local No. 725, a/w Retail Clerks International Association, AFL-CIO.

4a. Address: 1520 East Riverside Drive, Indianapolis, Indiana 46202.

4b. Telephone Number: 635-2488.

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit: Retail Clerks International Association, AFL-CIO.

6. Declaration:

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By EDWARD D. STAHL, JR. — Business Representative
(Signature of representative or person filing charge) (Title, if any)

1520 East Riverside Drive 635-2488 October 18, 1968
(Address) (Telephone number) (Date)

ORDER CONSOLIDATING CASES, COMPLAINT, AND NOTICE OF HEARING

(Filed November 27, 1968)

It having been charged in Case No. 25-CA-3214 and in Case No. 25-CA-3261, by Retail Clerks Union Local No. 725, Retail Clerks, International Association, AFL-CIO, herein called the Union, that Central Hardware Company, herein called Respondent, has engaged in, and is engaging in, unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 61 Stat. 136, 73 Stat. 519, herein called the Act, the General Counsel of the National Labor Relations Board, herein called the Board, by the undersigned Acting Regional Director for the Twenty-fifth Region, having duly considered the matter and deeming it necessary in order to effectuate the purposes of the Act, and to avoid unnecessary costs or delay,

Hereby Orders, pursuant to Section 102.33 of the Board Rules and Regulations—Series 8, that these cases be, and they hereby are, consolidated.

Said cases having been consolidated for hearing, the General Counsel of the Board, on behalf of the Board, by the undersigned Acting Regional Director, pursuant to Section 10(b) of the Act and the Board's Rules and Regulations, Series 8, Section 102.15, hereby issues this Consolidated Complaint and Notice of Hearing, and alleges as follows:

1. (a) The original charge in Case No. 35-CA-3214 was filed by the Union on August 21, 1968, and served on Respondent by registered mail on or about August 21, 1968.

(b) The original charge in Case No. 25-CA-3261 was filed by the Union on October 18, 1968, and served on

Respondent by registered mail on or about October 18, 1968.

2. (a) The Respondent is, and has been, at all times material herein, a corporation duly organized under, and existing by virtue of, the laws of the State of Missouri.

(b) At all times material herein, Respondent has maintained its principal office and place of business at St. Louis, Missouri, and various other facilities in other States of the United States, including facilities at Indianapolis, Indiana (one at 3801 North Shadeland, and one at 4707 West 38th Street, herein called the East Store and the West Store, respectively), herein called the Indianapolis facility; and is, and has been at all times material herein, engaged at the Indianapolis facility and the other facilities, in the sale and distribution of hardware, and related products.

(c) During the past year, a representative period, Respondent, in the course and conduct of its business operations, sold and distributed products, the gross value of which exceeded $500,000.00.

(d) During the past year, a representative period, Respondent, in the course and conduct of its business operations, purchased, transferred, and delivered to its facilities, goods and materials, valued in excess of $50,000.00 which were transported to said facilities directly from States other than the State wherein said facilities were located.

(e) Respondent is now, and has been at all times material herein; an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

3. The Union is, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

4. At all times material herein, the following-named persons occupied positions set opposite their respective names, and have been and are now agents of the Respondent at its facilities, acting on its behalf, and are supervisors within the meaning of Section 2(11) of the Act:

George Reed — Vice President
Stanley M. Cohen — President

West Store

.... Bernstein — Supervisor
Max Hagerman — Store Manager
Ren[illegible] Cuvellier — Supervisor
Phil Bowers — Supervisor

5. (a) Since on or about February 21, 1968, and continuing to date, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing its employees in the exercise of rights guaranteed in Section 7 of the Act, by the following acts and conduct:

(b) Respondent, by its following-named supervisors and agents, on or about the dates set opposite their names, interrogated its employees concerning their own and other employees' Union membership, activities, and desires, at its West Store:

George Reed — About early July 1968; July 6, 1968
... Bernstein — About late June 1968

(c) Responde[illegible] by its supervisor and agent George Reed, on or about June 13, 1968, at the West Store:

(i) threatened its employees they would lose existing benefits if they selected the Union as their collective bargaining agent;

(ii) promised its employees economic benefits and other benefits if they refrained from becoming or remaining members of the Union or giving any assistance or support to it; and

(iii) orally promulgated and announced to Respondent's employees a rule barring solicitation for the Union at any time on Respondent's property without Respondent's approval, which rule had the purpose and effect of unreasonably obstructing and interfering with its employees' Union activities.

(d) After June 13, 1968, Respondent disparately enforced the rule described in subparagraph 5(c)(iii) above, in that

(i) Respondent permitted employees and others opposing the Union to communicate and publish their opposition to the Union on Respondent's property and time;

(ii) Respondent permitted employees opposing the Union to circulate and procure signatures on an anti-Union petition on Respondent's property and time;

(iii) Respondent permitted solicitations for other causes and purposes on Respondent's property and time; and

(iv) Respondent prevented and forbade employees and others favoring the Union from expressing and publicizing their views on Respondent's property and time.

5. (e) Respondent, by its supervisor and agent George Reed, at the West Store, on or about July 8, 1968, and on or about July 6, 1968, threatened discharge and other reprisals if employees violated the rule described above in sub-paragraph 5(c)(iii).

(f) On or about June 13, 1968, at the East Store, Respondent, by its supervisor and agent George Reed, orally promulgated and announced a rule barring solicitation for the Union at any time on Respondent's property without Respondent's approval, which rule had the purpose and effect of unreasonably obstructing and interfering with its employees' Union activities.

(g) On July 15, 1968, Respondent, by its supervisor and agent Stanley M. Cohen, at the East Store and at the West Store, promulgated and thereafter enforced a rule barring Union organizers from appearing anywhere on Respondent's premises, including any appearances on Respondent's parking lot maintained by it for the public, which rule had the purpose and effect of unreasonably obstructing and interfering with its employees' Union activities.

(h) On or about July 22, 1968, Respondent, at the West Store, by its supervisor and agent Max Hagerman, in the presence of its employees, ordered Union representatives to leave the West Store, notwithstanding that Hagerman knew said Union representatives had entered Respondent's premises to do business as customers, and thereafter caused said Union representatives to be ejected from Respondent's premises, arrested, and removed from the premises in a paddy wagon by Indianapolis policemen.

(i) On or about October 15, 1968, at the East Store public parking lot, Respondent, by its store manager, ordered a Union representative to leave the public parking lot, and threatened to and did summon Indianapolis policemen for the purpose of forcibly ejecting said Union representative.

(j) On or about November 5, 1968, at the West Store, Respondent, by its supervisors and agents Rene Cuvellier and Max Hagerman, ordered a Union representative to leave the West Store and threatened to call the police to enforce their orders, notwithstanding that said Union representative had entered Respondent's premises to do business as a customer.

(k) On or about November 13, 1968, at the West Store, Respondent, by its supervisors and agents Rene

Cuvellier and Phil Bowers, ordered a Union representative to leave the West Store and threatened to call the police to enforce their orders, notwithstanding that said Union representative had entered Respondent's premises to do business as a customer.

6. (a) On or about July 8, 1968, Respondent did suspend for three days the employment of Marilyn Ragle, an employee of said Respondent employed at the West Store.

(b) Respondent did suspend the employee referred to and named above in paragraph 6(a) because said employee violated Respondent's rule described above in subparagraph 5(c)(iii).

7. By the acts described above in paragraph 6, and by each of said acts, Respondent did engage in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

8. By the acts described above in paragraphs 5, 6, and 7, and by each of said acts, Respondent did interfere with, restrain, and coerce, and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby did engage in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

9. The acts of Respondent described in paragraphs 5 through 8 above, occurring in connection with the operations of Respondent described in paragraph 2 above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

10. The acts of Respondent described above constitute unfair labor practices affecting commerce within the

meaning of Section 8(a)(1) and (3) and Section 2(6) and (7) of the Act.

Please Take Notice that on the 29th day of January, 1969, at 10:00 a. m. (EST) at the Hearing Room of the Board, Region Twenty-five, Sixth Floor, ISTA Center, 150 West Market Street, Indianapolis, Indiana, a hearing will be conducted before a duly designated Trial Examiner of the National Labor Relations Board on the allegations set forth in the above Consolidated Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony. Form NLRB 4668, Statement of Standard Procedure in Formal Hearings Held Before the National Labor Relations Board in Unfair Labor Practice Cases, is attached.

You are further notified that, pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Acting Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to said Consolidated Complaint within ten (10) days from the service thereof and that unless it does so, all of the allegations in the Consolidated Complaint shall be deemed to be admitted to be true and may be so found by the Board. Immediately upon the filing of its answer, Respondent shall serve a copy thereof on each of the other parties.

Dated at Indianapolis, Indiana, this 27th day of November, 1968.

GEORGE M. DICK
Acting Regional Director
National Labor Relations Board
Region Twenty-five
Sixth Floor, ISTA Center
150 West Market Street
Indianapolis, Indiana 46204

ANSWER

(Filed Dec. 5, 1968)

Comes now Central Hardware Company, Respondent herein, by and through its attorney Keith E. Mattern, and makes its Answer to the Complaint heretofore filed:

1. (a) Respondent admits receiving copies of the charges herein referred to but is without knowledge as to the date they were filed.

(b) Respondent admits the allegations of paragraph 1.(b) of this Complaint.

2. (a) Respondent admits the allegations of paragraph 2.(a) of this Complaint.

(b) Respondent admits the allegations of paragraph 2.(b) of this Complaint.

(c) Respondent admits the allegations of paragraph 2.(c) of this Complaint.

(d) Respondent admits the allegations of paragraph 2.(d) of this Complaint.

(e) Respondent admits the allegations of paragraph 2.(e) of this Complaint.

3. Paragraph 3. relates solely to the Union and, therefore, Respondent neither admits nor denies the allegation therein contained.

4. Respondent admits the allegations of paragraph 4. and presumes that .... Bernstein is, in reality, Phil Bernstein, one of Respondent's supervisors.

5. (a) Respondent denies the allegations contained in paragraph 5.(a).

(b) Respondent denies the allegations contained in paragraph 5.(b).

(c) Respondent is without knowledge as to the identity of the undisclosed supervisor.

(i) Respondent denies the allegations contained in paragraph 5.(c)(i).

(ii) Respondent denies the allegations contained in paragraph 5.(c)(ii).

(iii) Respondent denies the allegations contained in paragraph 5.(c)(iii).

(d) Respondent denies the allegations contained in paragraph 5.(d).

(i) Respondent denies the allegations contained in paragraph 5.(d)(i).

(ii) Respondent denies the allegations contained in paragraph 5.(d)(ii).

(iii) Respondent denies the allegations contained in paragraph 5.(d)(iii).

(iv) Respondent denies the allegations contained in paragraph 5.(d)(iv).

(e) Respondent denies the allegations contained in paragraph 5.(e).

(f) Respondent denies the allegations contained in paragraph 5.(f).

(g) Respondent denies the allegations contained in paragraph 5.(g).

5. (h) Respondent denies the allegations contained in paragraph 5.(h).

(i) Respondent denies the allegations contained in paragraph 5.(i).

(j) Respondent denies the allegations contained in paragraph 5.(j).

(k) Respondent denies the allegations contained in paragraph 5.(k).

6. (a) Respondent admits the allegations contained in paragraph 6.(a).

(b) Respondent has previously denied the allegations contained in paragraph 5.(c)(iii) and therefore denies the allegations contained in paragraph 6.(b).

7. Respondent denies the allegations contained in paragraph 7.

8. Respondent denies the allegations contained in paragraph 8.

9. Respondent denies the allegations contained in paragraph 9.

10. Respondent denies the allegations contained in paragraph 10.

December 5, 1968.

KEITH E. MATTERN
Attorney for Respondent

AMENDMENT TO CONSOLIDATED COMPLAINT

(Filed Jan. 16, 1969)

The undersigned Acting Regional Director of Region Twenty-five hereby amends the Complaint in Consolidated Cases Nos. 25-CA-3214 and 25-CA-3261 issued by the undersigned on November 27, 1968, in the following respect:

In sub-paragraph 3(b) thereof add the following new name and date set opposite his name:

> "Rene Caverlier—an unknown date in October, 1968."

You are further notified that pursuant to Sections 102.20 and 102.21 of the Board's Rules and Regulations, the Respondent shall file with the undersigned Acting Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an answer to the above Amendment to Consolidated Complaint within ten (10) days from the service thereof and that unless it does so, all of the allegations in the Amendment to Consolidated Complaint shall be deemed to be admitted to be true and may be so found by the Board. Immediately upon the filing of its answer, Respondent shall serve a copy thereof on each of the other parties.

Dated at Indianapolis, Indiana, this 16th day of January, 1969.

GEORGE M. DICK
Acting Regional Director
National Labor Relations Board
Region Twenty-five
Sixth Floor, ISTA Center
150 W. Market Street
Indianapolis, Indiana 46204

AMENDMENT TO ANSWER

(Filed Jan. 21, 1969)

Comes now Central Hardware Company, Respondent herein, by and through its attorney, Keith E. Mattern, and makes its Amendment to Answer to the Complaint heretofore filed:

5. (b) Respondent denies the allegations contained in Amendment to paragraph 5.(b) of the Complaint.

January 21, 1969

KEITH E. MATTERN
Attorney for Respondent
1509 Washington Avenue
St. Louis, Missouri
CHestnut 1-4000

[1] TRIAL EXAMINER'S DECISION

(Issued Jan. 23, 1969)

Statement of the Case

Alvin Lieberman, Trial Examiner: The trial in this proceeding, with all parties represented, was held before me in Indianapolis, Indiana, on January 29, 30, and 31, and February 5, and 6, 1969, upon the General Counsel's complaint[1] and amendment to complaint,[2] dated respectively November 27, 1968, and January 11, 1969,[3] and respondent's answer.

[2] In general, the issues litigated were whether respondent violated Section 8(a)(1) and (3) of the National Labor Relations Act, as amended (herein called the Act). Particularly, the questions for decision are as follows:

---

[1] The complaint was issued on separate charges filed on August 21 and October 18, 1968, by Retail Clerks Union Local No. 725, Retail Clerks International Association, AFL-CIO.

[2] During the trial the complaint and its formal amendment were amended by substituting the name "Rene Cuvellier" for "Rene Caverlier" whenever it appears in those pleadings.

[3] Unless otherwise noted, all subsequent references to the complaint include its amendment and all dates hereinafter mentioned without setting forth a year fall within 1968.

1. Did respondent violate Section 8 (a) (1) of the Act by coercively interrogating employees?

2. Did respondent violate Section 8(a)(1) of the Act by threatening, and promising benefits to, employees to induce them to refrain from supporting, or becoming members of, Retail Clerks Union Local No. 725, Retail Clerks International Association, AFL-CIO (herein called the Union)?

3. Did respondent violate Section 8(a)(1) of the Act by its "no-solicitation" rules and by the manner in which they were applied?

4. Did respondent violate Section 8(a)(1) of the Act by causing the arrest, and threatening to cause the arrest, of representatives of the Union?[4]

5. Did respondent violate Section 8(a)(3) and (1) of the Act by laying off an employee?

Upon the entire record,[5] upon my observation of the witnesses and their demeanor while testifying, and upon careful consideration of the arguments made and the able briefs submitted by the parties, I make the following:

Findings of Fact[6]

I. Jurisdiction

Respondent, a Missouri corporation whose principal office is located in St. Louis, Missouri, operates several retail hardware stores, two of which are located in Indianapolis, Indiana.[7] During the year ending [3] on November 27, a representative period, respondent's gross volume of business exceeded $500,000. In the same period respondent purchased and received merchandise valued at more than $50,000 from suppliers located in States other than those in which it operated stores. Accordingly, I find that respondent is engaged in commerce within the meaning of the Act and that the assertion of jurisdiction over this matter by the National Labor Relations Board (herein called the Board) is warranted. **Carolina Supplies and Cement Co.**, 122 NLRB 88, 89; **Catalina Island Sightseeing Lines**, 124 NLRB 813, 815.

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[4] On respondent's motion made at the conclusion of the General Counsel's case-in-chief paragraph 5(d)(iii) and (iv) which also alleged independent violations of Section 8(a)(1) were dismissed, no evidence having been offered by the General Counsel to support the former and the latter being redundant.

[5] Issued simultaneously is a separate order correcting the stenographic transcript of this proceeding in several respects.

[6] Respondent's motion to dismiss the complaint, made at the close of the trial, upon which decision was reserved and all other motions upon which decision was reserved are disposed of in accordance with the findings and conclusions set forth in this Decision.

II. The Labor Organization Involved

The Union is a labor organization within the meaning of the Act.

III. The Alleged Unfair Labor Practices

A. Introduction

Briefly, this case concerns itself with events which occurred during the Union's campaign to organize the employees working in respondent's two Indianapolis stores. Among these, were a speech delivered to respondent's employees by its vice president, respondent's promulgation of two "no-solicitation" rules, its interrogation of employees, the arrest in one of respondent's stores of a union representative and threats to have another arrested, and the layoff of an employee.

The complaint alleges, and the General Counsel contends,[8] that respondent violated Section 8(a)(1) of the Act by threats and promises made by respondent's vice president during the course of his speech, by its two "no-solicitation" rules[9] and the disparate manner of their application, by its interrogation of employees concerning compliance with one of the rules and respecting matters relating to the Union, by causing the arrest of a union representative, and by threatening to have another arrested. It is further alleged in the complaint, and contended by the General Counsel, that by suspending an employee to punish her for having violated one of the "no-solicitation" rules claimed to be invalid, respondent contravened Section 8(a)(3).[10]

---

[7] This case deals only with respondent's Indianapolis stores.

[8] As the contentions of the General Counsel and the Union are in large part similar, unless otherwise indicated they will be referred to hereinafter as the General Counsel's contentions.

[4] For its part respondent denies that the speech given by its vice president contained threats or promises of benefit. Asserting that its "no-solicitation" rules were valid, or if seemingly too broad not improperly enforced, respondent argues that the Act was not violated by its promulgation or enforcement of the rules, by its laying off an employee for not having complied with one of the rules, or by the interrogation through which it learned of the rule's transgression. Insofar as the arrest and threatened arrest are concerned respondent contends that it was not obliged to permit union representatives to enter its stores; that it did not want the union representatives in its stores; that when they refused to leave upon request it threatened to, and did, call the police to eject them; that one union representative nevertheless remained in its store; and that when a policeman arrived, he, on his own volition, without being requested to do so by respondent, arrested the union representative.

---

[9] As will be more fully set forth below, one of these rules excluded nonemployee representatives of the Union from respondent's parking lots. The other applied to employees and was not limited to respondent's parking lots.

[10] In pertinent part these sections provide:

> Section 8. (a) It shall be an unfair labor practice for an employer—
>
> > (1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;
> >
> > (3) by discrimination in regard to hire or tenure of employment . . . to encourage or discourage membership in any labor organization. . . .

Section 7, insofar as relevant, provides as follows:

> Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection. . . .

B. Facts and Conclusions Concerning Respondent's Premises; Its Employees and Their Availability for Organizing Purposes; and the Union's Organizing Campaign[11]

1. Respondent's stores and parking lots

Respondent operates two stores on offstreet enclaves in outlying areas of Indianapolis. One of its stores (herein called the West [5] Store) is located near the intersection of West 38th Street and Lafayette Road. The other store (herein called the East Store) is situated near the intersection of East 38th Street and Shadeland Avenue.

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[11] These findings and conclusions are being made here, at the outset of this Decision, in order to furnish a frame of reference, within which to consider respondent's "no-solicitation" rules. To bring the rules, themselves, into focus, in this connection, their provisions will be set forth in this footnote even though it will be necessary to restate them later when their validity will be discussed at length, at which time I will also take up the parties' major arguments in this respect. However, to the extent that the contentions of the parties relate specifically to the findings and conclusions here made they will be considered here, although they may again be considered in another context. The two rules in question follow:

> 1. "[N]o solicitation may be made on company premises for any purposes without prior management approval. Violations . . . will result in disciplinary action including the possibility of dismissal."
>
> 2. "[M]anagement [will] keep all union organizers off [company] premises both inside and outside."

The roads, which intersect near respondent's stores are busy public highways.[12] along which traffic moves at fairly high rates of speed.[13] There are no sidewalks alongside the roads in question in the vicinity of respondent's stores.

Although employees are stationed in the sales areas of respondent's stores, their main function is to advise customers as to the nature and purpose of the merchandise displayed for sale. Insofar as actual sales are concerned, customers, in the main, serve themselves. Shopping carts and baskets are provided in which goods selected by customers may be carried to checkout lanes, located near the store's front doors, which are manned by employees. It appears, therefore, that the hardware stores are operated very much like the familiar self-service grocery markets.

In each of respondent's stores there are storage areas, which customers do not enter. There are also lockerrooms and lunchrooms set aside for use by employees during their free time. Although customers do not, like employees, eat in the West Store employee lunchroom they do, from time to time, enter it for the purpose of buying cigarettes and candy bars which are there offered for sale.[14] In addition to using the employee lunchrooms and lockerrooms during their off-duty time employees may, and do, eat their lunch on respondent's parking lots, to be described below.

[6] Respondent leases its Indianapolis stores. Also under lease to respondent at the site of each store are paved off-street areas used as parking lots. The major portion of each lot is directly in front of the store to which it is adjacent, the remainder lying to one side of the store. Each lot is large enough to accommodate about 350 cars. Employees who drive to work are required to park in certain areas of these lots, generally those sections along the side of the store in which they work.

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[12] Recent surveys made by Indiana state and county agencies show that on weekdays between 8 a. m. and 10 p. m. more than 29,000 vehicles pass each of the street intersections near which respondent's stores are located.

[13] Posted speed limits of from 35 to 40 miles an hour are typical of the streets in question.

[14] Although not too clear from the record, it would appear that the cigarettes and candy bars sold in the West Store employee lunchroom are dispensed by vending machines.

The enclaves in which respondent's stores are located also contain other business enterprises. Among these, at the site of the West Store, are a restaurant, a loan company, and a carpet store, each with its own parking lot, much smaller in size than respondent's. At the East Store site are an office building, an establishment at which automobiles are washed, and a truck service station which has its own parking space.[15]

There are no fences[16] or gates around respondent's parking lots, nor does respondent station guards there for the purpose of refusing their use to anyone. There are, likewise, no signs barring trespassers from the lots.

The areas which contain respondent's stores and the other business enterprises described may be entered[17] from their adjoining roads only at certain places. There is one entrance to the West site from West 38th Street and two from Lafayette Road. The East location may be entered from Shadeland Avenue at several points, three of which are directly in front of respondent's parking lot. It may also be entered by means of an access road which runs from respondent's parking lot to East 38th Street. At some points at which automobiles enter and leave these areas people may stand without danger from passing traffic.

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[15] Respondent asserts, despite the presence of other business enterprises, some of which are retail in character, that the complexes in which its stores are located are not shopping centers. Accordingly, respondent argues that **Amalgamated Food Employees Union Local 590 et al. v. Logan Valley Plaza et al.**, 391 U. S. 308, and **Solo Cup Company, etc.**, 172 NLRB No. 110, on which the General Counsel heavily relies in support of his claim that the rule excluding nonemployee representatives of the Union from respondent's parking lots is invalid, are inapplicable. However, whether or not respondent's stores are in shopping centers is immaterial, inasmuch as the Board, in **Priced-Less Discount Foods, Inc., etc.**, 162 NLRB 872, 874, equated a single store parking lot to a shopping center parking lot.

[16] The only fence on either of the locations is one maintained around its property at the East site by the car washing establishment located there.

[17] The entrances described in this paragraph are also the only exits from the areas in question.

[7] 2. Respondent's employees

Respondent took possession of its Indianapolis stores on April 15. Between that date and June 3, when they were opened for business, respondent hired employees and was engaged in preparing to open its stores.

There are about 125 people working in each of the stores. This number has remained fairly constant since respondent first occupied them.

Most of respondent's employees live in various sections of Indianapolis, a city whose population exceeds 476,000. About 50 employees live in surrounding towns.[18] The average distance from these localities to the stores in which employees living in them worked is about 20 miles.

Several employees who live outside of Indianapolis have rural route addresses. These do not locate the employee concerned geographically and are difficult to find.

A few of respondent's employees walk to work. The remainder arrive in automobiles driven either by themselves or others. Although employees who drive to work are required to leave their cars in certain specified areas of respondent's parking lots, they are not limited in their choice of the lots' entrances and exits. Consequently, all are used by employees as their convenience dictates.

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[18] The findings respecting respondent's employees are based upon its payroll records for the period ending on June 15, which are in evidence as General Counsel's Exhibit 6. There is no contention that the general situation portrayed by these records did not obtain at any material time.

Respondent issues distinctive orange colored vests and smocks to its employees. These have been worn by employees since about June 3, the date on which respondent's stores opened for business. In addition, they wear name tags.

There are two newspapers of general circulation published in Indianapolis, and respondent's merchandise advertisements appear in these. Also published in Indianapolis are some 40 so-called negihborhood newspapers. There are 4 television, and about 15 radio stations whose broadcasts are ordinarily able to be seen and heard in the Indianapolis area.

In connection with its contention that several avenues of communication with its employees in addition to talking to them on the parking lot were open to the Union, respondent would have me find that its employees customarily read the two newspapers which carry [8] respondent's advertisements. This finding, were I to make it, would have to be based solely on an assumption and opinion given by Charles Mercer, the Union's director of organization, that retail employees "ordinarily read the newspapers to watch the ads in the stores in which they work so they're familiar with what's on sale and what isn't on sale." While this opinion as to the reading habits of retail employees may be well founded insofar as their perusal of their stores' advertisements is concerned, I feel that it is an insufficient basis for a finding that these employees read other parts of the newspaper in which the advertisement appears. Accordingly, there being an absence of actual evidence on the subject, I do not make the finding suggested by respondent.

3. The Union's organizing campaign

The Union's organizing campaign began in the latter part of May. During its course the Union used several methods of obtaining support among respondent's employees.

Representatives of the Union from time to time walked through respondent's stores. After noting the appearance and name tags of the employees, who could be recognized by their distinctive vests and smocks, the Union's representatives spoke to them on the parking lots at the beginning and end of the day and during their lunch period and free time. Employees who favored the Union talked to their colleagues in the stores and also on the parking lots. Based on information received from various sources the Union compiled a list of names and addresses of employees which, by July 22, was about 80 percent complete. Using this list representatives of the Union visited the residences of employees and there sought to convince those whom they found at home of the benefits of unionization.

Respondent's "no-solicitation" rules prevented the Union from continuing its store and parking lot communication with employees. The rules, of course, did not preclude the Union from pursuing other methods of reaching employees with its message. These, as suggested in **Solo Cup Company, etc.**, 172 NLRB No. 110, could have included distribution of literature at the points at which employees entered and left the parking lots; the use of radio, television, and newspapers; meeting employees on the streets of Indianapolis, where most of them lived; and the continuation of visits to employees' homes.

Concerning the latter method, here, unlike the situation which was present in **Solo Cup**, the Union had a fairly complete list of employees' names and addresses and representatives of the Union continued to visit the homes of employees after respondent's "no-solicitation" rules were announced. The principal problem which this entailed, aside from the substantial difficulty of finding the homes of employees who lived in rural areas surrounding Indianapolis, was that the employees were absent from their homes more often than not when the Union's **[9]** representatives called. In this regard, Mercer, the Union's director of organization, testified that a union representative making a "home call . . . may have to go back on an average of five or six times in order to actually make contact with the person" sought.

Mercer's testimony was based on his general organizing experience. It does not appear from the evidence that he visited the home of any employee of respondent. However, Mark Kapetanakis, one of the Union's organizers, did. The results which he obtained support Mercer's conclusion. Of 50 to 60 employees at whose homes Kapetanakis called, he succeeded in talking to from 7 to 10; the rest were out when visited by him.

Again unlike the situation which obtained in **Solo Cup,** union representatives can, as I have found, safely stand at some of the points at which automobiles enter and leave the areas in which respondent's stores are located for the purpose of distributing literature to, and otherwise communicating with, respondent's employees. The Union, however, did not engage in this practice.

To have done so would have required the union representative participating in this procedure to be able to determine which of several entry or exit points would be used by the employees, who could choose any, and to be able to distinguish the cars in which employees ride from those of other people driving through those points in time to stop the employees' cars. Even were I to find that these difficulties could have been overcome, which the evidence does not seem to warrant, had the Union instituted the program here under consideration it would have resulted in lines of automobiles backing up into the parking lots and traffic tieups on the surrounding roads.

Concerning the Union's use of newspapers, radio, and television, there are, as I have already found, more than 40 newspapers published in Indianapolis, and 4 television and some 15 radio stations whose signals can be seen and heard there. This being so, I find, as did the Board in **Solo Cup**, that were the Union to attempt to communicate with respondent's employees through these channels it "would have a problem in . . . deciding on the appropriate stations or newspapers,[19] and would not be able to reach the employees **effectively** . . . through such media." [Emphasis in original.]

In arriving at the foregoing conclusion in **Solo Cup** the Board "assum[ed] that cost was no object." In the instant case the evidence establishes that cost was, indeed an object. Respecting this, Mercer **[10]** stated that the Union did not use radio and television in its organizing campaign because of the "cost factor, which is quite high [and] very expensive in addition to not knowing which station to put [the advertisement] on."

Insofar as meeting on the street is concerned, Indianapolis, although not as large as Chicago, the city in which the events giving rise to the Board's decision in **Solo Cup** took place, is, nevertheless, a substantial metropolitan community. In **Solo Cup**, the employees concerned lived in and around Chicago. Similarly, here, respondent's employees live in various sections of Indianapolis and in its surrounding towns. Accordingly, it is quite unlikely that representatives of the Union would, or could be expected to, meet any significant number of respondent's employees on the street.

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[19] In this regard, as Mercer, the Union's director of organization, testified "we have several radio stations in the Indianapolis area, around 15 at least. It would be hard to distinct [sic] which one radio station to put the advertisement on." In this connection, see also my findings, set forth above, concerning the Indianapolis newspapers in which respondent's merchandise advertisements appear.

In a not too different context the Board in **Solo Cup** distinguished the situation present there from the one before the Supreme Court in **N. L. R. B. v. Babcock & Wilcox Company,** 351 U. S. 105, 107. In **Babcock & Wilcox,** a large percentage of the employees involved lived in Paris, Texas, a city of 21,000 people. Because of this the Court was of the opinion that nonemployee union representatives, barred by a "no-solicitation" rule from a plant parking lot could reasonably be expected to continue to avail themselves of other methods of imparting information to the employees, which included "talking with them on the streets of Paris." This distinction is equally applicable here. I find, therefore, that the method of communication between the Union and respondent's employees here under discussion would be as impractical as any of the others which have been considered.

Accordingly, I conclude that there are no reasonable means available to nonemployee representatives of the Union to reach respondent's employees with its organizing message other than by having those representatives meet them on respondent's parking lots.

C. Facts Concerning Respondent's Alleged Unfair Labor Practices Relating to Its Rule Against Solicitation by Employees and Its Enforcement

In speeches delivered to respondent's employees on June 13 by George Reed, its vice president,[29] he announced respondent's "policy regarding solicitations on company premises." This policy, which is still in effect, is, as stated by Reed, that "no solicitation may be made on company premises for any purpose without prior management [11] approval. Violations of the no solicitation policy will result in disciplinary action, including the possibility of dismissal." It seems clear from the penalty provision of this "policy" that its applicability is limited to employees.[21]

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[29] Reed gave the same speech twice at each of respondent's stores, once to full-time employees and once to part-time employees. A copy of this speech is in evidence as an attachment to General Counsel's Exhibit 2.

During the latter part of June, Larry Stuck, an employee in respondent's West Store, notified a supervisor that he had received a union authorization card from Marilyn Ragle, another employee. Within a short time this matter was brought to Reed's attention.

Although Reed interrogated Stuck and Ragle extensively concerning the place of the card's delivery to Stuck, he was unable to establish that Ragle had given it to Stuck in the store, as Stuck maintained during the interrogation. However, Reed became convinced during his questioning of Ragle that she had violated respondent's "no-solicitation" rule in other respects[22] and that punishment was required. Accordingly, on July 8, Ragle was laid off for 3 days. At the time of her layoff Ragle was given a paper entitled "Notice of Disciplinary Action[23] which stated:

> This is to record that [Marilyn Ragle] has violated the Company's "no-solicitation" rule; and is hereby

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[21] As has already been set forth (see footnote 11) respondent promulgated another "no-solicitation" rule aimed at nonemployee representatives of the Union. This rule will be discussed at length in a later portion of this decision.

[22] Reed's conviction in this regard was based, he testified, on Ragle's admission to him that she had "soliciated . . . people [although not Stuck] on company time in the store."

[23] This document is in evidence as General Counsel's Exhibit 10.

given a disciplinary layoff of three (3) days, and a warning that future violation of the rule will result in immediate discharge without further notice.

While questioning Ragle concerning the authorization card received by Stuck, Reed showed her a document which had been circulated among and signed by, employes working in respondent's East Store. This paper, which I shall for convenience refer to hereinafter as a petition or as an antiunion petition, is addressed to Reed, is undated, bears 97 signatures, and recites that the subscribers "do **not** want the [Union] harassing [them] any more [and] do not wish to join this union."[24]

In support of his contention that respondent's employee "no-solicitation" rule was discriminatorily enforced, the General Counsel, in effect, requests that I find that the petition was circulated after **[12]** June 13, the date on which respondent's rule was announced; that it was circulated in the store and there signed by employees in the presence of a supervisor; and that no disciplinary action was taken against those employees who circulated or signed the petition. All the findings sought by the General Counsel concerning the petition, except with respect to the time of its circulation and signing, are supported by a preponderance of the evidence and are, therefore, made.

Raymond Spears, upon whose testimony the foregoing findings are based, was the only witness who gave evidence as to the actual circulation and signing of the petition. His testimony was not precise as to the date on which these events occurred. In this regard he stated that "to the best of [his] knowledge" he was asked to sign the petition by a fellow employee "in the month of June . . . about three to four weeks" after he had been transferred from the West Store, where he began to work for respondent, to the East Store.

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[24] This petition is in evidence as General Counsel's Exhibit 8.

Spears was equally imprecise about the date of his transfer to the East Store. He fixed the time, however, as being in the "latter part of May," or about the "middle [of May] or from there on." His final words on the subject was that he started to work at the East Store some 3 or 4 weeks after he began to work at the West Store.

Spears was as uncertain about his date of hire at the West Store as he was about all the other dates he gave. In this respect, Spears was unable to recall when, exactly, he started to work at the West Store, but stated that it was in "the latter part of April."

The exact date on which the petition was circulated or on which it was signed by Spears can not be determined from the testimony he gave. The periods during which these things occurred, can, however, be calculated by substituting actual dates for the indefinite time spans assigned by Spears to the events in question.

Reckoning on this basis, Spears started to work at respondent's West Store between April 15 and April 30, which interval would comprise, as he testified, "the latter part of April." He was transferred to the East Store, as he stated, 3 to 4 weeks later, or between May 6 and May 28. Finally, he related that in June, about 3 or 4 weeks after his transfer, or between June 1 and June 25, he signed the petition. As part of this period, within which he signed the petition, included a substantial span of time before June 13, when respondent's "no-solicitation" rule was made known to its employees, I cannot find that the petition was signed by Spears, or circulated, after that date.

D. Contentions and Concluding Findings as to Respondent's Employee "No-Solicitation" Rule

The General Counsel contends that respondent's employee "no-solicitation" rule is invalid because of its undue breadth and that by not penalizing the employees at its East Store who circulated and **[13]** signed the petition respondent discriminatorily enforced its rule.[25] Respondent contends that the rule in question is privileged because of the retail nature of its business; that the evidence does not establish that the rule was discriminatorily enforced; and that Ragle's layoff for noncompliance with the rule does not fall within the Act's proscription because the rule, respondent claims, is valid. As will be shown below, respondent's contentions and that of the General Counsel concerning the discriminatory enforcement of the rule are not well taken.

Unlike the situation obtaining in a factory, for example, where a rule forbidding solicitation during employees' off-duty time is presumptively invalid,[26] an operator of a retail store is "privileged to promulgate a rule prohibiting all union solicitation within the selling areas of the store during both working and nonworking hours." **Montgomery Ward & Co., Inc.,** 145 NLRB 846, 848, modified in other respects, 339 F. 2d 889 (C. A. 6). However a retail store rule prohibiting "solicitation in any form . . . on store premises" is "unduly broad in scope" and therefore violative of Section 8(a)(1) of the Act because it forbids "solicitation during nonworking time whether on or off the selling floor and in or out of work areas." **Mock Road Super Duper, Inc.**, 156 NLRB 983, 984.[27]

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[25] The General Counsel seems to argue that by its discriminatory enforcement of the rule respondent engaged in an unfair labor practice separate and apart from its promulgation of the rule.

[26] **Stoddard-Quirk Manufacturing Co.,** 138 NLRB 615, 617.

The validity of respondent's rule here under consideration turns, therefore, on whether it bans solicitation by employees off respondent's selling floors during their non-working time. In this regard, even if the lunchroom in respondent's West Store, in which only employees eat, is considered as a selling area because customers enter it from time to time to buy the cigarettes and candy bars there offered for sale, **[14]** there are other portions of respondent's premises, clearly not used for selling purposes, which would, nevertheless, fall within the rules purview. Included among these are the lunchroom in the East Store, employees' lockerrooms, storage areas located off the sales floors, and the parking lots, in all of which the rule, on its face, forbids solicitation by employees regardless of whether they are actually working.

Being thus unduly broad, respondent's employee "no-solicitation" rule goes beyond the privilege set forth in **Montgomery Ward.** It is, therefore, invalid.

Having found that respondent's employee "no-solicitation" rule is invalid, it follows that the interrogation of Stuck and Ragle by Reed, respondent's vice president, to determine whether the rule had been complied with was violative of Section 8(a)(1) of the Act. **Pepsi-Cola Bottlers of Miami, Inc.**, 155 NLRB 527, 530-531. It also follows that Ragle's disciplinary layoff by respondent because she allegedly failed to comply with the rule was violative of Section 8(a)(3). **Marlene Industries Corporation, et al.**, 166 NLRB No. 58.

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[27] The Court of Appeals for the Sixth Circuit refused to enforce the Board's Order in **Mock Road** insofar as it dealt with the "no-solicitation" rule because the court was of the opinion that there was insufficient evidentiary support for the Board's conclusion as to the nature of the rule. **N. L. R. B. v. Mock Road Super Duper, Inc.**, 393 F. 2d 432, 435. The court, however, did not find fault with the principle enunciated by the Board. In any event, as a Trial Examiner, it is my "duty to apply established Board precedent which the Board or the Supreme Court has not reversed." **Prudential Insurance Company of America**, 119 NLRB 768, 773, reversed on other grounds 361 U. S. 477. As far as my research has disclosed the precedent established by the Board in **Mock Road** has not been reversed by either the Supreme Court or the Board.

As noted earlier, the General Counsel argues that respondent separately violated Section 8(a)(1) of the Act by its discriminatory enforcement of the rule. This argument is based upon the circulation and signing of an anti-union petition in respondent's East Store. As set forth above, the evidence does not warrant a finding that the circulation and signing of the petition occurred after June 13, the date on which respondent announced its employee "no-solicitation" rule. This being so, I must reject this argument.

In sum, therefore, I conclude that respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act by promulgating, maintaining, and enforcing an unduly broad rule forbidding solicitation by its employees, and by interrogating employees concerning their compliance with this rule. I further conclude that respondent engaged in unfair labor practices within the meaning of Section 8(a)(3) and (1) by laying Ragle off because of her claimed noncompliance with the rule.

Finally, insofar as respondent's employee "no-solicitation" rule is concerned, I conclude that the General Counsel has not sustained his burden of proving by a preponderance of the evidence that respondent separately violated Section 8(a)(1) of the Act by enforcing the rule in a discriminatory manner. I will, therefore, recommend that paragraph 5(d), (d)(i), and (d)(ii) and the relating portion of paragraph 8 of the complaint be dismissed.

[15] E. Facts Concerning Respondent's Alleged Unfair Labor Practices Relating to Its Rule Against Solicitation by Nonemployees and Its Enforcement

About a month after respondent adopted its employee "no-solicitation" rule it announced the promulgation of a "no-solicitation" rule applicable to nonemployee representatives of the Union. This was done by letter dated July 15,[28] distributed about 4 or 5 days later, in which respondent's employees were informed by its president that instructions had been issued to "our Indianapolis management to keep all union organizers off our premises, both inside and outside." Like respondent's employee "no-solicitation" rule, this rule, too, is still in force.

Although by its terms respondent's nonemployee "no-solicitation" rule is effective inside respondent's stores, as well as outside, the evidence establishes that its main thrust is to prevent nonemployee union organizers from soliciting on behalf of the Union on respondent's parking lots. To this end, respondent's officials, since July 22, have asked union representatives to leave its lots.

F. Contentions and Concluding Findings as to Respondent's Nonemployee "No-Solicitation" Rule

Claiming that respondent's parking lots are generally open to the public,[29] and that confrontation between the Union and respondent's employees on the parking lots is the only reasonable method of solicitation available to the Union, the General Counsel argues that respondent's nonemployee "no-solicitation" rule is invalid. In support of this argument the General Counsel relies principally on **Amalgamated Food Employees Union Local 590 et al. v. Logan Valley Plaza, Inc., et al.**, 391 U. S. 308, and **Solo Cup Company, etc.**, 172 NLRB No. 110.

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[28] A copy of this letter is in evidence as General Counsel's Exhibit 3.

[29] It will be remembered in this connection, that I have already found that there are no barriers, guards, or signs barring anyone from using respondent's parking lots.

Taking issue with the General Counsel's premise that its employees are not reasonably within reach of the Union except on the parking lots, respondent contends that there are avenues of communication with its employees readily available to the Union other than by meeting them on the parking lots.[30] Taking further issue with the General Counsel, **[16]** respondent asserts that its stores are not located in shopping centers and that, therefore, their parking lots cannot be deemed to be generally open to the public. Accordingly, respondent argues in support of the validity of its ban against nonemployee solicitation that **Logan Valley** and **Solo Cup** are inapposite and that the general rule expressed in **N. L. R. B. v. Babcock & Wilcox Company,** 351 U. S. 105, should be followed.

In determining the question of the lawfulness of respondent's rule barring nonemployee union organizers from its parking lots the starting point for analysis is the Supreme Court's decision in **Babcock & Wilcox** where the legality of a similar proscription applicable to a parking lot adjoining a manufacturing plant was under consideration. There the Court noted[31] that "organization rights" of employees, including their right "to learn the advantages of self-organization" from nonemployee union representatives, stem from "the same authority, the National Government, that preserves [the] property rights" of their employers. "Accommodation between the two" rights, the Court went on to say, "must be obtained with as little destruction of one as is consistent with the maintenance of the other."

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[30] As will be recalled, I have found against respondent on this point. However, as shall be shown, even had this issue been determined in respondent's favor it would not, in the circumstances of this case, require a conclusion, as respondent argues, that its nonemployee "no-solicitation" rule is valid.

[31] 351 U. S. 112-113.

Striking the balance made necessary by this formula, the Court concluded[32] "that an employer may validly post his property against nonemployee distribution of union literature[33] if reasonable efforts by the union through other available channels of communication will enable it to reach the employees with its message and if the employer's notice or order does not discriminate against the union by allowing other distribution." But, the Court went on to say,[34] "if the location of a plant and the living quarters of the employees place the employees beyond the reach of reasonable union efforts to communicate with them, the employer must allow the union to approach his employees on his property." Finding that these conditions did not obtain, the rule involved in **Babcock & Wilcox** was not disturbed by the Court.

The general problem present in **Babcock & Wilcox**, but in a different legal and physical setting, again came before the Supreme Court in **Amalgamated Food Employees Union Local 590 et al. v. Logan Valley Plaza, Inc., et al.**, 391 U. S. 308. Unlike **Babcock & Wilcox, Logan Valley** was not concerned with the circumstances under which an employer's rule excluding nonemployee union representatives from an **[17]** industrial plant parking lot could with propriety intrude upon rights guaranteed by Section 7 of the Act. The issues in **Logan Valley** were broader. They required a balancing of rights arising from private ownership of property against rights of employees guaranteed not only by statute but also by the Constitution.

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[32] 351 U. S. 112.

[33] In context there appears to be no distinction between distribution of union literature and other forms of union solicitation.

[34] 351 U. S. 113.

Specifically, in **Logan Valley** the Court had to decide whether a union had been properly enjoined from peaceful picketing on a parking lot within the confines of a privately owned shopping center, called Logan Valley Mall, which invited public patronage. A store located in the shopping center was the object of the picketing. The pickets were not employed in the store. They patrolled near the store in an area of the shopping center parking lot which was generally open to the public and to which the public had unrestricted access.

The sole ground urged for the affirmance of the injunction was that the picketing constituted a trespass on private property; i. e., the privately owned shopping center and the parking lot on which it occurred. This argument was not accepted. To do so, the Court commented, would be to permit retail merchants whose businesses are located in privately owned shopping centers, which it likened[35] to "normal municipal business district[s]" unjustifiably to immunize themselves from lawful picketing "by creating a *cordon sanitaire* of parking lots around their stores."[36]

Accordingly, the injunction was nullified. In doing so the Court in **Logan Valley**, as it had done in **Babcock & Wilcox**, again struck a balance between rights granted to employees by statute and the Constitution and rights flowing from the same sources generally enjoyed by their employers. In this regard the Court stated:[37]

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[35] 391 U. S. 319.

[36] 391 U. S. 325.

[37] 391 U. S. 325.

Therefore, as to the sufficiency of respondent's ownership of the Logan Valley Mall premises as the sole support of the injunction issued against petitioners, we simply repeat what was said in **Marsh v. Alabama**, 326 U. S., at 506, "Ownership does not always mean absolute dominion. The more an owner, for his advantage, opens up his property for use by the public in general, the more do his rights become circumscribed by the statutory and constitutional rights of those who use it."

[18] The final case in this analysis is **Solo Cup Company, etc.,** 172 NLRB No. 110. Here the Board concluded that a rule excluding nonemployee union representatives from the parking lots of a privately owned industrial park was invalid.

For a proper understanding of the Board's rationale in **Solo Cup,** account must be taken of the nature of the premises involved. Notwithstanding its private ownership the industrial park in question was open generally to the public. Noting the absence of fences, gates, guards, or signs prohibiting anyone from entering the property, the Board stated that "even though the area may not be classed as a fully 'public' area, in view of the unlimited accessibility to the area . . . it has become through custom and use, a quasi-public area." Accordingly, the Board found, as did the Supreme Court in **Logan Valley** with respect to the privately owned shopping center there under consideration, that the privately owned industrial park was "clearly analogous to . . . the normal municipal business district."

In arriving at its conclusion in **Solo Cup** that the rule barring nonemployee union representatives from the industrial park was an unfair labor practice the Board first applied the longstanding criteria enunciated in **Babcock & Wilcox.** In this regard, the Board found that the Union was unable "by 'reasonable attempts' to reach [the employees concerned] 'through other available channels of communications,'" and that the rule was enforced in a discriminatory manner. For these reasons the Board, in essence, held that the property rights of the employer in **Solo Cup** had to yield to the rights guaranteed to his employees by Section 7 of the Act.

Upon reaching this result in **Solo Cup**, grounded on **Babcock & Wilcox**, the Board could well have stopped, but did not. It went further and assessed the impact of **Logan Valley**, which had been decided by the Supreme Court some 2 months earlier, on the situation then before it. Having done this, the Board enunciated a new, independent, and highly significant consideration to be taken into account in balancing the respective rights of employer and employee. Relying on the principles set forth in **Logan Valley**, the Board held in **Solo Cup**, separate and apart from its conclusions based on the authority of **Babcock & Wilcox**, that where an employer's private property has attained quasi-public status a ~~rule~~ denying access to that property to a nonemployee union representative for the purpose of soliciting on behalf of a union is violative of Section 8(a)(1) of the Act. To this end the Board stated:

> There were no fences, gates, guards, or signs barring trespassers or distribution of literature on the property, all of which are general indications foreclosing the access of private property to the public. Thus even though the area may not be classed as a fully "public" area, in view of the unlimited accessibility to the area established by past practice it has become through custom and use, a quasi-public area.
>
> [19] In the recent **Logan Valley Plaza** case, the Supreme Court in an analogous situation, found that a privately owned shopping center could not exclude non-

employees who sought to peacefully picket and distribute literature from the premises. In reaching such conclusion the Court pointed out that the shopping center utilized its premises or property as the "functional equivalent" of a "normal municipal business district" and the "public had unrestricted access to the property." The Court also noted that the economic development of the United States in the last 20 years, particularly in the area of suburban growth and the advent of shopping centers, would, if a contrary conclusion be reached, allow businesses located in suburban shopping centers to immunize themselves from all types of union campaigns and prevent the "free expression and communication that is the heart of the First Amendment." We find the industrial park in the present case clearly analogous to the privately owned suburban shopping center or the normal municipal business district and similarly conclude that Respondents cannot deny access to the premises to union representatives, whether it be for picketing or handbilling.

Accordingly, in determining whether an employer's rule excluding nonemployee union representatives from his property is valid the question of whether his employees are otherwise within reasonable reach by the union has significance. This factor, however, is not of paramount importance in the case of parking lots, whether in shopping centers or not.[38] Of equal, if not of greater, importance in view of constitutional implications, as **Solo Cup** teaches, is whether the parking lot in question, although privately owned, is quasi-public in character. If that is the fact, the owner of the lot may not prevent nonemployee agents of a union from communicating with his employees on the lot even though they may be otherwise reasonably available to receive the union's message.

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[38] As I have already noted (see footnote 15, above), the Board does not differentiate between shopping centers and single store parking lots.

The parking lots here, like the premises in **Solo Cup**, are accessible to the public without limitation. Also like the property in **Solo Cup**, the parking lots are unfenced, unguarded, and there are no posted signs barring anyone from the lots.

Accordingly, as the Board did in **Solo Cup**, I find that respondent's parking lots have a quasi-public status. This being so, I further find on the authority of **Solo Cup** that respondent's rule excluding nonemployee representatives of the Union from its parking lots is invalid.

I conclude, therefore, that by promulgating, maintaining, and enforcing this invalid rule respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

[20] G. Facts Concerning Respondent's Alleged Violations of Section 8(a)(1) of the Act Unrelated to the "No-Solicitation" Rules

As set forth in the introductory portion of this Decision the complaint alleges that respondent violated Section 8(a)(1) of the Act in several other respects. In this regard it is asserted that respondent made promises and threats to induce employees to refrain from supporting the Union, interrogated an employee respecting matters relating to the Union,[39] caused the arrest of one union representative, and threatened to have another arrested. Each allegation will be separately discussed.

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[39] The interrogation allegation to be considered here appears in the amendment to the complaint and does not relate to the interrogation carried on by George Reed, respondent's vice president, in connection with the union authorization card received by Larry Stuck, one of respondent's employees, as to which findings have already been made.

1. The promises and threats

It will be recalled that on June 13 George Reed, respondent's vice president, made speeches to employees in which he announced what I have called respondent's employee "no-solicitation" rule. In the same speeches Reed told his listeners that their "salaries and benefits . . . already exceed[ed] that which [was] currently being offered to employees in comparable retail establishments in Indianapolis." Reed also remarked, in this vein, that it was respondent's feeling that its employees "are entitled to more benefits than the [Union] has been successful in obtaining from comparable retail stores in Indianapolis."

Woven into Reed's speech at this point were references to what he called the Union's "propaganda" which, apparently, contained statements of advantages ensuing from union membership. These, Reed said "would have to be negotiated over a bargaining table." In this event, he continued, "If [the Union] would be successful in leading you down the garden path, then quite frankly all bets are off and we start from scratch."

2. The interrogation

During October Marilyn Ragle[40] wore a button issued by the Union which, in effect, urged people to register for the purpose of voting in the forthcoming presidential election. Seeing this button, Rene Cuvellier, one of respondent's supervisors, stated to Ragle, as she testified, "I reckon you'd like to have the Union in here." Upon [21] receiving an affirmative response, Cuvellier said "they'll never make it" because, unlike a union he belonged to in California, the Union did not "have a dental plant [plan?] here."

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[40] Ragle's layoff in July for allegedly violating respondent's employee "no-solicitation" rule has already been found to have been an unfair labor practice.

3. The arrest and threatened arrests

Mark Kapetanakis, who resides in Columbus, Ohio, is employed as an organizer by the Retail Clerks International Association, of which the Union is an affiliate. Edward Stahl, who lives in the Indianapolis area, occupies a similar position on the Union's staff. In about mid-June Kapetanakis came to Indianapolis to assist the Union in its campaign to organize respondent's employees.

On July 22, after making calls at employee's homes, Kapetanakis and Stahl met on the parking lot at respondent's West Store. While walking toward the store they were intercepted by Max Hagerman, respondent's Indianapolis group manager, who told them not to enter the store and to leave the parking lot.[41] Refusing to comply with Hagerman's direction, Kapetanakis said that he was going into the store as a customer. Upon being informed by Hagerman that his business was not wanted and that "if [he] went into the store [Hagerman] had orders to take action," Kapetanakis repeated that he "was going in as a customer and [Hagerman] could do what he had to do."[42] Having said this, Kapetanakis entered the store.

Although Kapetanakis told Hagerman that his entry into the store would be as a customer and testified that he "was going to look at some golf equipment," Kapetanakis also testified that this was "not necessarily" all he intended to do, or all that he actually did, in the store. In this regard, as Kapetanakis further related, while in the store he "looked to see who the employees [were] facial-wise, who was working and who [he could] home call." **[22]** While Kapetanakis, the Union's representative, was wandering around the store, an Indianapolis policeman who had been sent for by Hagerman, respondent's group manager, arrived. Hagerman having pointed Kapetanakis out to the policeman, the policeman approached him, asked him to leave the store, escorted him to the door, and placed him in the rear seat of a marked police car which was parked near the store's front door.

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[41] In its brief respondent asserts that neither Kapetanakis nor Stahl ever made known to any of respondent's management representatives they were agents of the Union. Respondent further states in its brief that Stahl, who had at an earlier time been employed by respondent; "was known only as a former employee discharged for cause and Kapetanakis was unknown." This, however, is not borne out of the evidence. Hagerman, himself, testified that he knew on July 22 that "Ed Stahl was associated with the Union" and that he also knew that Kapetanakis "was associated [with the Union] through Ed Stahl."

[42] These findings are based upon a synthesis of the testimony given by Hagerman and Kapetanakis. The quotations are taken from Kapetanakis' narration.

After a short wait, during which the policeman who had walked out of the store with Kapetanakis conferred with another of superior rank, Kapetanakis was told that he was under arrest and a police van was called. Upon its arrival Kapetanakis was led from the car in which he had been sitting, placed in the van, which like the other police vehicle was clearly marked for what it was, and driven to a police station. All of this, from Kapetanakis' first confrontation with the policeman in the store until he was taken away in the police van, occurred in view of several employees of respondent.

In addition to Kapetanakis' arrest, Stahl, who like Kapetanakis is a representative of the Union, was twice threatened with arrest by officials of respondent in respondent's West Store. The first incident of this nature occurred on November 5, some 2 weeks after Stahl, himself, signed the second charge in this case[43] which alleged Kapetanakis' arrest as having been caused by respondent in violation of Section 8(a)(1) of the Act.

On the day of the first threat Stahl was in respondent's store for the purpose, he testified, of buying paint. He was told, however, by Cuvellier, one of respondent's supervisors, that respondent "didn't want [his] business and to leave the store." Hagerman, respondent's group manager, joined Stahl and Cuvellier at this point and said to Stahl, as he further related, "Ed, I want you to leave the store or I'll call the police." Apparently, this conversation did not take place within view or hearing of any employee.

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[43] The charge in question was docketed as 25-CA-3261.

Having been ordered out of the store, Stahl, followed by Hagerman, walked from the paint department toward the checkout lanes located in front of the store, one of which was manned by Ragle, an employee. As they approached Ragle's lane Stahl asked Hagerman to repeat what he had said in the paint department. Hagerman did so using the same words he had used earlier. This time, however, they were heard by Ragle. In this connection, Stahl candidly agreed that he asked Hagerman to repeat himself in Ragle's presence "so she would hear what [Hagerman] had to say." After this repetition Stahl left the store.

Stahl returned on November 13. While in the sporting goods department he encountered two supervisors, Phil Bowers and Cuvellier. Stahl told both, as he recounted, that he was in the store to "buy . . . **[23]** lighter fluid as a customer." They replied that respondent "didn't want his business [and] to leave the store." Cuvellier added that unless Stahl did so the police would be called. Stahl, thereupon, left the store. As with Stahl's paint department conversation with Cuvellier and Hagerman, respondent's Indianapolis group manager, on November 5, Stahl's encounter with Bowers and Cuvellier on November 13 does not appear to have been seen or heard by any employee.

H. Contentions and Concluding Findings Concerning Respondent's Alleged Violations of Section 8(a)(1) of the Act Unrelated to the "No-Solicitation" Rules

Respondent contends, on brief, that the portion of the speech of its vice president, Reed, including the "start from scratch" phrase, was not given in a coercive atmosphere, nor was there, on respondent's part, a "background of anti-union sentiment or unfair labor practices," and that, therefore, "there is no basis for penalizing respondent on this issue." The General Counsel argues that it is clear from other remarks in Reed's speech, that his "start from scratch" language is a promise that existing benefits would be continued and increased if respondent's employees refrained from supporting the Union and also a threat that they would be discontinued or diminished if the Union was supported. Thus, the General Counsel contends, respondent has violated the Act.

The expression "start from scratch," or words of similar import, when applied by employers to bargaining or to benefits which employees enjoy, or which they may expect to obtain through membership in a labor organization is now new in labor relations matters. "In the context of . . . other substantial unfair labor practices committed by [an employer, the words in question] imply a threat of reprisal should . . . employees select [a] union; [they are] thus coercive." **Aerovox Corporation, etc.**, 172 NLRB No. 97. On the other hand, where "an examination of [the employer's contemporaneous behavior" shows an absence of accompanying coercive conduct "no unlawful meaning should be attached to the words in issue." **Wagner Industrial Products Company, Inc.**, 170 NLRB No. 157.

Accordingly, in determining whether the "start from scratch" phrase used by Reed, respondent's vice president, was violative of Section 8(a)(1) of the Act reference must be had to respondent's other conduct. If it includes substantial unfair labor practices, then the expression in question must be deemed to have taken on an aura of coercion.

In this regard, it will be remembered that in the very speech in which Reed uttered the "start from scratch" words he also announced respondent's employee "no-solicitation" rule, which I have found to have been violative of the Act. A short time later respondent interrogated two employees concerning an alleged violation of the rule and laid off one, Ragle, because of her claimed failure to comply with **[24]** the rule. This conduct, too, I have found to have been violative of the Act. Finally, I have found that respondent's "no-solicitation" rule relating to nonemployee representatives of the Union was also violative of the Act. In the "context of [these] other substantial unfair labor practices[44] committed by" respondent, I find that Reed's "start from scratch" language constituted, as the General Counsel argues, both a threat of reprisal and a promise of benefit designed to induce employees to refrain from supporting the Union. As such, the expression under consideration was coercive within the meaning of Section 8(a)(1) of the Act.

The second item in this category of unfair labor practices allegedly committed by respondent is the statement made to Ragle, an employee of respondent, by Cuvellier, a supervisor, that he thought that Ragle would "like to have the Union in here." The General Counsel argues that because Cuvellier's statement had the effect of "causing [Ragle] to declare [her] position" concerning the Union "Respondent thereby violated Section 8(a)(1) of the Act." Ragle was, indeed, caused by Cuvellier's statement to declare her position concerning the Union. I am not persuaded, however, that by causing her to do so respondent violated Section 8(a)(1).

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[44] Aside from respondents other unfair labor practices, the substantiality of an unfair labor practice involving a discriminatory deprivation of employment, as in Ragle's case, cannot be gainsaid. It "goes to the very heart of the Act." **N. L. R. B. v. Entwistle Manufacturing Company,** 120 F. 2d 532, 536 (C. A. 4). This is not to say that I consider respondent's other unfair labor practices to be unsubstantial.

In **Southern Cotton Oil Crude Mill, etc.**, 144 NLRB 959, 965, relied on by the General Counsel, it was stated that a supervisor's "remark [which] cause[d] an [employee] to declare his position . . . would not be coercive standing alone." What moved the Board to find the remark there under consideration to be coercive was another statement in the conversation between the supervisor and the employee in which the former "indicat[ed] that the job prospects of union adherents were not bright."

No such facts appear here. The balance of the conversation in question consisted of an innocuous comment by Cuvellier that the Union would "never make it" not because of something respondent might do, but because the Union lacked a "dental plant [plan ?]."

The last items for consideration are the arrest and threatened arrest, respectively, of Kapetanakis and Stahl, organizers for the Union. Claiming that respondent knew that Kapetanakis had entered its store as a customer, the General Counsel argues in his brief that respondent violated Section 8(a)(1) of the Act when it caused his **[25]** arrest "in front of its employees." The General Counsel makes a similar argument with respect to respondent's threats to cause Stahl's arrest.

In **Heck's, Inc.**, 156 NLRB 760, 761, modified in other respects 386 F. 2d 317 (C. A. 4), cited by the General Counsel to support his position, the Board found a violation of Section 8(a)(1) by an operator of a retail store who, "in front of its employees, ordered a union representative to leave [its] store although he had entered the premises to do business as a customer," and, as here in the case of Kapetanakis, called upon the police to enforce its order. The touchstone for the Board's decision in **Heck's** is the finding that the union representative there "entered the premises to do business as a customer." Such a finding, insofar as Kapetanakis is concerned, is not warranted here. Although Kapetanakis told Hagerman, respondent's Indianapolis group manager, that he, was "going [into the store] as a customer," this, in my judgment, was nothing more than a ruse to overcome Hagerman's objections to his entering the store.

Two facts fortify my opinion in this regard. The first is that Kapetanakis came to Indianapolis from his home in Columbus, Ohio, to assist the Union in organizing respondent's employees. The second is that immediately before arriving at respondent's West Store on the day in question Kapetanakis, accompanied by Stahl, another representative of the Union, had been making calls at employees' homes. Under these circumstances it strains credulity to accept at face value Kapetanakis' statement to Hagerman that he intended to enter the store "as a customer."

On the other hand, I am impressed with Kapetanakis' admission that while in the store he "looked to see who the employees [were] facialwise, who [was] working and who [he could] home call." In the face of this testimony, to believe that Kapetanakis was in the store as a customer rather than as an organizer for the Union would be to exalt form, i. e., what Kapetanakis told Hagerman, over substance; i. e., what Kapetanakis actually did during his tour of the store. I, therefore, find that Kapetanakis was in respondent's store as an organizer for the Union and not as a customer.

My opinion is the same insofar as it concerns Stahl, a union representative who was twice threatened with arrest unless he left respondent's West Store. Much need not be said about the second incident, which took place on November 13. Having found that it did not occur within the sight or hearing of employees, even if Stahl were, in fact, a customer at the time, respondent's order that he leave the store coupled with a threat to call the police unless he complied would not have been violative of Section 8(a)(1) of the Act. **Priced-Less Discount Foods, Inc., etc.**, 162 NLRB 872; **Heck's Inc.**, 156 NLRB 760, 761.

In the background of the first incident involving Stahl was the Kapetanakis affair, which, from the time he was first approached by the policeman in the store until his removal in the police van, was witnessed by employees. This gave rise to the charge, signed by Stahl, himself, alleging Kapetanakis' arrest as an unfair labor practice. **[26]** Some 2 weeks after he signed the charge Stahl went into respondent's West Store, ostensibly to buy paint. Upon seeing Stahl, Hagerman, respondent's Indianapolis group manager, ordered him to leave the store and threatened to call the police if he did not do so. No employees being present in the paint department at the time, Stahl maneuvered Hagerman to a point in the store at which an employee was on duty. In her presence and, as he admitted, "so that she would hear" Stahl had Hagerman repeat what he had earlier said in the paint department.

A customer, it seems to me, would not have acted in this manner. It is clear to me that the purpose of Stahl's ploy was to obtain an employee witness to Hagerman's threat to have police eject him from the store if he did not obey the order to leave.

Whether Stahl sought by this to create an independent incident similar to the one which concerned Kapetanakis, or to lend support to the charge he signed respecting that matter, or whether he had still another object in mind is of no moment. What is important is that the entire complex of events convinces me that Stahl, like Kapetanakis, did not enter respondent's store at the time in question as a customer, but as a representative of the Union.

Having found that neither Kapetanakis nor Stahl "had entered Respondent's premises to do business as a customer" as the complaint alleges, I further find that the manner in which their removal was accomplished was not violative of Section 8(a)(1) of the Act. See, in this connection, **Super X Drugs of West Virginia, Inc.**, 169 NLRB No. 42, and **Meier & Frank Company, Inc.**, 89 NLRB 1016, 1018.

In sum, respecting the allegations of the complaint not directly related to respondent's "no-solicitation" rules, I conclude that respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) of the Act by the speech given by Reed, its vice president, insofar as it contained threats of reprisal and promises of benefit to induce employees to refrain from becoming members of, or supporting, the Union.

I further conclude that respondent did not engage in unfair labor practices within the meaning of Section 8(a)(1) by its interrogation of Ragle, one of its employees, during October; by ordering Kapetanakis and Stahl, representatives of the Union, to leave its West Store, by causing the arrest of Kapetanakis, or by threatening to cause the arrest of Stahl. I will therefore recommend that the pleading entitled "Amendment to Consolidated Complaint," and paragraph 5(h), (j), (k), and the relating portions of paragraph 8 of the complaint be dismissed.

IV. The Effect of the Unfair Labor Practices Upon Commerce

Respondent's activities to the extent found violative of the Act occurring in connection with its operation set forth in section I, above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

[27]

V. The Remedy

Having found that respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act, my Recommended Order will direct respondent to cease and desist therefrom and to take such affirmative action as will effectuate the policies of the Act. In this connection, inasmuch as respondent has already reinstated Ragle respondent will be required only to make her whole for loss of earnings she may have suffered by the discrimination practiced against her. Any back pay found to be due shall include interest in the amount and manner provided for in **Isis Plumbing & Heating Co.**, 138 NLRB 716.

As an alternative to its claim that its employee "no-solicitation" rule was privileged respondent, claiming that the rule was not improperly enforced, argues, on brief, that for this reason "no remedy is indicated." The short answer to this argument is found in **Great Atlantic & Pacific Tea Company, Inc.**, 162 NLRB 1182, 1184, 1189. There, notwithstanding the fact that an invalid "no-solicitation" rule had not been enforced at all, a remedial order was entered.

Accordingly, my Recommended Order will contain remedial provisions relating to respondent's "no-solicitation" rules. It will also contain, in view of the nature and extent of respondent's unfair labor practices, broad cease-and-desist provisions.

Upon the basis of the foregoing findings of fact and upon the entire record in this case, I make the following:

Conclusions of Law

1. Respondent is an employer within the meaning of Section 2(2) of the Act and is engaged in commerce within the meaning of Section 2(6) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By promulgating, maintaining, and enforcing a rule prohibiting employees from soliciting any other employee on behalf of the Union in nonselling and nonworking areas of its retail stores during nonworking time respondent has engaged, and is engaging, in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

4. By interrogating Larry Stuck and Marilyn Ragle, employees of respondent, concerning their compliance with the rule described in Conclusion of Law 3, above, respondent has engaged, and is engaging, in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

[28] 5. By laying off Marilyn Ragle, an employee of respondent, on the ground that she failed to comply with the rule described in Conclusion of Law 3, above, thereby discouraging membership in the Union, respondent has engaged, and is engaging, in unfair labor practices within the meaning of Section 8(a)(3) and (1) of the Act.

6. By promulgating, maintaining, and enforcing a rule prohibiting nonemployee representatives of the Union from appearing on parking lots maintained by respondent adjacent to its retail stores and there soliciting employees on behalf of the Union respondent has engaged, and is engaging, in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. By promising employees that the benefits they enjoyed would be increased to induce them to refrain from becoming members of, or assisting, the Union respondent has engaged, and is engaging, in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

8. By threatening employees that the benefits they enjoyed would be discontinued or diminished if they became members of, or assisted, the Union respondent has en-

gaged, and is engaging, in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

9. Respondent did not engage in unfair labor practices within the meaning of Section 8(a)(1) of the Act by disparately enforcing the rule described in Conclusion of Law 3, above.

10. Respondent's interrogation of Marilyn Ragle, one of its employees, during October 1968 was not coercive and respondent did not thereby engage in an unfair labor practice within the meaning of Section 8(a)(1) of the Act.

11. Respondent did not engage in unfair labor practices within the meaning of Section 8(a)(1) of the Act by ordering Mark Kapetanakis, a representative of the Union, to leave its store, or by causing him to be arrested and removed from its premises in a police van.

12. Respondent did not engage in unfair labor practices within the meaning of Section 8(a)(1) of the Act by ordering Edward Stahl, a representative of the Union, to leave its store, or by threatening to call the police to enforce its orders.

13. The unfair labor practices engaged in by respondent, as set forth in Conclusions of Law 3, 4, 5, 6, 7, and 8, above, affect commerce within the meaning of Section 2 (6) and (7) of the Act.

Upon the foregoing findings of fact, conclusions of law, and upon the entire record in this case, I hereby issue the following:

[29] RECOMMENDED ORDER

Central Hardware Company, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Promulgating, maintaining, enforcing, interrogating any employee concerning, or laying off, discharging, or otherwise disciplining any employee for failure to comply with, any rule prohibiting any employee from soliciting any other employee on behalf of Retail Clerks Union Local No. 725, Retail Clerks International Association, AFL-CIO, or any other labor organization, in nonselling or nonworking areas of its retail stores during the nonworking time of both.

(b) Promulgating, maintaining, or enforcing any rule prohibiting nonemployee representatives of Retail Clerks Union Local No. 725, Retail Clerks International Association, AFL-CIO, or any other labor organization, from appearing on the parking lots adjacent to its retail stores and there soliciting employees on behalf of Retail Clerks Union Local No. 725, Retail Clerks International Association, AFL-CIO, or any other labor organization.

(c) Promising employees benefits, or threatening them with any form of reprisal, to induce them to refrain from becoming members of, or assisting, Retail Clerks Union Local No. 725, Retail Clerks International Association, AFL-CIO, or any other labor organization.

(d) Discouraging membership in Retail Clerks Union Local No. 725, Retail Clerks International Association, AFL-CIO, or any other labor organization, by discriminating against employees in regard to hire or tenure of employment or any term or condition of employment.

(e) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights to self-organization, to form, join or assist Retail Clerks Union Local No. 725, Retail Clerks International Association, AFL-CIO, or any other labor organization, to bargain collectively through representatives of their own choosing, or to engage in any concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act, as amended, or to refrain from any or all such activities except insofar as these rights could be affected by any contract with a labor organization, if validly made in accordance with said Act, whereby membership therein is a condition of employment after the 30th day following the date of such contract or the beginning of such employment, whichever is later.

2. Take the following affirmative action which, it is found, will effectuate the policies of the National Labor Relations Act, as amended:

(a) Revoke and withdraw its rule, announced in speeches to employees delivered on or about June 13, 1968, by George Reed, its vice president, or any prior or subsequent rule, insofar as any said rule prohibits [30] any employee from soliciting any other employee on behalf of Retail Clerks Union Local No. 725, Retail Clerks International Association, AFL-CIO, or any other labor organization, in nonselling or nonworking areas of its retail stores during the nonworking time of both.

(b) Revoke and withdraw its rule, announced in letters, dated July 15, 1968, addressed, and later delivered, to employees, or any prior or subsequent rule prohibiting nonemployee representatives of Retail Clerks Union Local No. 725, Retail Clerks International Association, AFL-CIO, or any other labor organization, from appearing on the parking lots adjacent to its retail stores and there soliciting employees on behalf of Retail Clerks Union Local No. 725, Retail Clerks International Association, AFL-CIO, or any other labor organization.

(c) Make Marilyn Ragle, whole, in the manner set forth in the section of this Decision entitled "The Remedy," for any loss of earnings she may have suffered by reason of the discrimination practiced against her.

(d) Preserve and, upon request, make available to the National Labor Relations Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Recommended Order.

(e) Post at each of its Indianapolis stores copies of the attached notice marked "Appendix."[45] Copies of said notice, on forms provided by the Regional Director for Region 25 of the National Labor Relations Board, after being duly signed by respondent's authorized representative, shall be posted by respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by respondent to insure that said notices are not altered, defaced, or covered by any other material.

(f) Notify said Regional Director, in writing, within 20 days from the receipt of this Decision, what steps respondent has taken to comply herewith.[46]

[31] It Is Further Ordered that the pleading entitled "Amendment to Consolidated Complaint" and the complaint be, and they hereby are, dismissed insofar as they allege unfair labor practices not specifically found herein.

Dated at Washington, D. C.

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[45] In the event that this Recommended Order is adopted by the Board, the words "a Decision and Order" shall be substituted for the words "the Recommended Order of a Trial Examiner" in the notice. In the further event that the Board's Order is enforced by a decree of a United States Court of Appeals, the words "a Decree of the United States Court of Appeals Enforcing an Order" shall be substituted for the words "a Decision and Order."

[46] In the event that this Recommended Order is adopted by the Board, this provision shall be modified to read: "Notify said Regional Director, in writing, within 10 days from the date of this Order, what steps respondent has taken to comply herewith."

APPENDIX

Notice to All Employees

Pursuant to the Recommended Order of a Trial Examiner of the National Labor Relations Board and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify our employees that:

After a trial in which both sides had an opportunity to present their evidence, it has been adjudged that we violated the law by committing unfair labor practices. Accordingly, we post this notice and we will keep the promises that we make in this notice.

WE WILL NOT make, or enforce, any rule prohibiting any employee from soliciting any other employee to become a member of, or to support, Retail Clerks Union Local No. 725, or any other union, in nonselling or nonworking parts of our stores during nonworking time. As such a rule was announced in speeches given by George Reed, our vice president, on June 13, 1968, WE WILL cancel it.

WE WILL NOT question any employee as to whether such a rule has been obeyed and WE WILL NOT fire, lay off, suspend, or in any other way punish any employee for not obeying such a rule.

WE WILL NOT make, or enforce any rule prohibiting organizers or representatives of Retail Clerks Union Local No. 725, or any other union, from coming on our parking lots to solicit, or to arrange to solicit, any employee to become a member of, or to support, Retail Clerks Union Local No. 725, or any other union. As such a rule was announced in letters to employees, dated July 15, 1968, signed by Stanley M. Cohen, our president, WE WILL cancel it.

WE WILL NOT reduce your salary, or wages, or any other benefit you now have, or do anything else which will be to your disadvantage, and WE WILL NOT threaten to do any of these things for the purpose of encouraging you not to support, or not to become members of, Retail Clerks Union Local No. 725, or any other union.

WE WILL NOT raise your salary or wages, or give you any benefits you do not now enjoy, and WE WILL NOT promise to do any of these things for the purpose of encouraging you not to support, or not to become members of, Retail Clerks Union Local No. 725, or any other union.

WE WILL NOT fire, lay off, suspend, fail or refuse to reinstate, or discriminate against, any employee for engaging in union activity or for joining any union. As it has been decided that we discriminated against Marilyn Ragle in this manner when we suspended her because she engaged in activity in support of Retail Clerks Union Local No. 725, WE WILL pay her for any loss of wages she suffered because we suspended her.

WE WILL NOT in any manner interfere with, restrain, or coerce you in the exercise of any rights guaranteed to you by the National Labor Relations Act. In this connection, WE WILL respect your rights to self-organization, to form, join, or assist any union, to bargain collectively through any union or representative of your choice as to wages, hours of work, and any other term or condition of employment. You also have the right, which WE WILL also respect, to refrain from doing so.

All our employees are free to become or remain, or not to become or remain, members of Retail Clerks Union Local No. 725, or any other union.

CENTRAL HARDWARE COMPANY
(Employer)

Dated .... By ....
(Representative) (Title)

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

If employees have any question concerning this notice or compliance with its provisions, they may communicate directly with the Board's Regional Office, 614 ISTA Center, 150 West Market Street, Indianapolis, Indiana 46204, Telephone 317-633-8921.

RESPONDENT'S BILL OF EXCEPTIONS AND ASSIGNMENTS OF ERROR

(Filed July 22, 1969)

Respondent hereby excepts to and assigns error in findings, conclusions, rulings and omissions of Trial Examiner Lieberman in his Decision herein and during the conduct of the hearing herein. Respondent submits to the Board that the findings, conclusions, rulings and omissions that are hereinafter detailed, adversely affect respondent's substantial rights and are prejudicial.

Respondent herein presents its exceptions. Respondent's grounds for those exceptions with supporting authorities will be set forth in Respondent's brief which will be filed, by leave of the Board before July 30, 1969.

Respondent excepts as follows:

1. To the Trial Examiner's finding (TXD, p. 4, line 24 and p. 6, line 10) that Respondent's stores are located in "enclaves."

2. To the Trial Examiner's finding and conclusion (TXD p. 4, lines 39-50, p. 5, lines 32-37) that Respondent has adopted, promulgated or otherwise maintained a "no-solicitation" rule which states:

> "Management will keep all union organizers off company premises both inside and outside."

3. To the Trial Examiner's finding and conclusion (TXD p. 6, lines 35-47) that it is immaterial whether or not Respondent's stores are in shopping centers or in single store parking lots.

4. To the Trial Examiner's finding (TXD p. 7, lines 12-16) that Respondent's employees live in localities which are an average of 20 miles from Respondent's stores.

5. To the Trial Examiner's failure to find (TXD p. 7, lines 41-44 and p. 8, lines 1-12) that Respondent's employees customarily read one or both of Indianapolis' two newspapers of daily general circulation.

6. To the Trial Examiner's finding (TXD p. 8, lines 33-34) that Respondent's "no-solicitation" rules prevented the union from continuing its store and parking lot communication with employees.

7. To the Trial Examiner's finding (TXD p. 9, lines 26-30) that the union's passing out literature at the entrances to Respondent's stores would have resulted in traffic tieups on the surrounding roads and parking lots.

8. To the Trial Examiner's finding and conclusion (TXD p. 10, lines 30-33) that there are no means available to non-employee representatives of the union to reach Respondent's employees with its organizing message other

than by having those representatives meet them on Respondent's parking lots.

9. To the Trial Examiner's conclusion (TXD p. 13, lines 11-22 and 38-50) that **Montgomery Ward & Co., Inc.** and **Mack Road Super Duper, Inc.** correctly state the law concerning the latitude of no-solicitation rules in retail stores.

10. To the Trial Examiner's conclusion (TXD p. 13, lines 24-26) that the validity of Respondent's employee no-solicitation rule turns on whether it bans solicitation off the selling floor during non-working times.

11. To the Trial Examiner's finding (TXD p. 14, lines 9-11) that Respondent's employee no-solicitation rule is invalid.

12. To the Trial Examiner's findings (TXD p. 14, lines 13-20) that Respondent's alleged interrogation of Stuck and Ragle and Ragle's subsequent layoff were violative of the Act.

13. To the Trial Examiner's conclusion (TXD p. 15, lines 15-20) that the main thrust of General Counsel's Exhibit 3 was to prevent non-employee union organizers from soliciting on Respondent's parking lots.

14. To the Trial Examiner's conclusion (TXD p. 19, lines 34-35) that Respondent's premises are accessible to the public without limitation.

15. To the Trial Examiner's finding (TXD p. 19, lines 39-42) that Respondent's parking lots have a quasi-public status and that a rule excluding non-employees is invalid.

16. To the Trial Examiner's conclusion (TXD p. 19, lines 44-46) that Respondent engaged in unfair labor practices by promulgating, maintaining and entering a non-employee no-solicitation rule.

17. To the Trial Examiner's finding (TXD p. 24, lines 4-10) that Reed's speech was coerced under the Act.

18. To the Trial Examiner's conclusion (TXD p. 26, lines 30-36) that Respondent engaged in unfair labor practices by the speech given by Reed.

19. To the Trial Examiner's conclusions of law (TXD pp. 27 and 28) Nos. 3, 4, 5, 6, 7, 8, 9 and 13.

20. To the Trial Examiner's recommendation (TXD p. 29, lines 13 and 14) that Respondent cease and desist from maintaining a non-solicitation rule in storage areas of its stores.

Wherefore, the Board is requested to reverse the Examiner's findings, conclusions, rulings and omissions and recommendations that have heretofore been discussed.

Under the provisions of Section 102.46 (i) of the Rules, Respondent respectfully requests permission to present oral argument on the Exceptions herein set forth.

Respectfully submitted

KEITH E. MATTERN

Attorney for Respondent

DECISION AND ORDER

(Issued March 4, 1970)

On June 23, 1969, Trial Examiner Alvin Lieberman issued his Decision in the above-entitled proceeding, finding that Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the attached Trial Examiner's Decision. He further found that Respondent had not engaged in certain other unfair labor practices alleged in the complaint and recommended that such allegations be dismissed. Thereafter, the Respondent filed exceptions to the Trial Examiner's Decision and a supporting brief, and the General Counsel filed limited exceptions with a brief in support of the Trial Examiner's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Trial Examiner's Decision, the exceptions and briefs, and the entire record in this case,[1] and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner with the following modifications:

1. The Trial Examiner found, and we agree, that Respondent violated Section 8(a)(1) of the Act by maintaining an unlawfully broad employee "no-solicitation" rule. The Trial Examiner also found, however, that Respondent did not violate Section 8(a)(1) of the Act by disparate and discriminatory enforcement of this rule. General Counsel excepted to this finding. For the reasons set forth below, we find merit in General Counsel's exception.

On June 13, 1968, the Respondent's Vice-President, George Reed, delivered a speech to the employees and announced a long-standing policy regarding solicitations on company premises. The policy as stated was that "no solicitation may be made on company premises for any purpose without prior management approval." The Trial Examiner found, as stated above, that this rule was invalid and in violation of Section 8(a)(1) of the Act.

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[1] As the record herein, including the exceptions and briefs, adequately presents the positions of the parties, Respondent's request for oral argument is hereby denied.

Sometime in June, an antiunion petition was circulated among the employees at the Respondent's East Store. Raymond Spears, while on working time in the selling area of the store, was asked to sign the petition. Ted Kaptain, a supervisor for Respondent, was present at the time of the signing and praised the objectives of the petition. No disciplinary action was taken against the circulators or signatories of the petition. Later, in July, George Reed while unlawfully interrogating employee Ragle showed her the document and stated that it had been circulated and signed by employees at the East store. In contrast with its leniency with regard to employees engaging in antiunion activity on working time, Respondent strictly enforced its no-solicitation rule against Ragle for union solicitation on July 8 by laying her off for 3 days. We find, therefore, that Respondent by its disparate and discriminatory enforcement of the invalid no-solicitation rule further violated Section 8(a)(1) of the Act.

2. For the reasons hereinafter set forth, we find, contrary to the Trial Examiner, that Respondent violated Section 8(a)(1) of the Act, by its conduct in ejecting Union Representative Mark Kapetanakis from its store and having him arrested.

The Trial Examiner found, and the record reveals, that union Representative Kapetanakis, on July 22, 1968, attempted to enter the Respondent's West store, and was told by store manager, Max Hagerman, not to enter the store and to leave the parking lot. Kapetanakis replied that he was going into the store as a customer to look at sporting goods and would not talk to employees about the Union. At the hearing, he testified that he also intended to look "to see who the employees [were] facial wise, who [was] working and who [he could] home call." Hagerman testified that he informed Kapetanakis "that if he went in the store [he] had orders to call the police." Kapetanakis entered the store and went to the sporting goods department. Shortly, thereafter, an Indianapolis policeman who had been sent for by Hagerman, asked Kapetanakis to leave the store, and in full view of several employees, escorted him out and placed him in a police vehicle. This action was taken by Respondent in furtherance of a rule it had adopted to "keep all union organizers off [its] premises, both inside and outside." The Trial Examiner correctly found this rule to be an unduly broad, and hence invalid, nonemployee no-solicitation rule violative of Section 8(a)(1) of the Act.[2] But he held nonetheless that Respondent did not act unlawfully in ejecting Kapetanakis from the store and in having him arrested in the circumstances above set out. We do not agree.

We are not faced here, with the question of whether Respondent could lawfully have prohibited Kapetanakis from engaging in union solicitation on its selling floor.[3]

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[2] In finding this rule to be unduly broad, the Trial Examiner took into consideration circumstances disclosing that there were no reasonable means available to the nonemployee representatives of the Union to reach Respondent's employees with its organizing message except at the Respondent's premises; that the complex in which Respondent's stores were located contains other business enterprises; that there are no fences, or gates around Respondent's parking lots; that Respondent does not station guards there for the purpose of refusing access to anyone; and that there are no signs barring trespassers from its lots. We agree that these circumstances distinguish this case from **N. L. R. B. v. Babcock and Wilcox Co.**, 351 U. S. 105. See **Solo Cup Co.**, 172 NLRB No. 110, and **Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza, Inc.**, 391 U. S. 308.

In addition, we note also that Respondent precluded any union solicitation by employees on its premises, while permitting antiunion solicitation, thereby further restricting employee opportunities to be informed about organization.

[3] See the following cases involving retail store operations in which we have held that employers may lawfully prohibit nonemployee union organizers from soliciting and from distributing union material in certain areas of the retail store premises and enforce violations of that prohibition by expulsion and by main-

The undisputed evidence establishes that Kapetanakis had advised Respondent he was entering the store as a customer, and on doing so committed no overt act inconsistent with his announced intent or otherwise disruptive of Respondent's business. In the context of Respondent's other, and clearly unlawful action restrictive of employee organizational rights, we find that Respondent's summoning of the police to have Kapetanakis expelled and arrested in the full view of its employees was not justified by any legitimate business cnnsiderations, but was motivated by the same antiunion considerations that prompted Respondent's unlawful prohibitions of employee solicitation in the store, its prohibition of nonemployee solicitation on its parking lots, its discriminatory enforcement of its no-distribution and no-solicitation employee rules, and its other unlawful conduct directed against employee self-organizational rights.[4]

We therefore conclude that by expelling and having union representative Kapetanakis arrested, in the present circumstances, Respondent further interfered with, restrained, and coerced its employees in the exercise of their rights guaranteed by Section 7 of the Act, and thereby violated Section 8(a)(1) of the Act.[5]

3. We reach a different conclusion, however, as to Union representative Stahl, whom Respondent also excluded from the store and threatened with arrest. Respondent

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tenance of surveillance over the non employee union organizers who enter the store for purposes of soliciting employees. **G. C. Murphy Company**, 171 NLRB No. 45; **Heck's, Inc.**, 170 NLRB No. 53; **Super X Drugs of West Virginia, Inc.**, 169 NLRB No. 42; Cf. **Marshall Field & Co.**, 98 NLRB 88.

[4] No contrary inference as to Respondent's motivation flows from Kapetanakis' admission at the hearing that his subjective but undisclosed reason for entering the store was to acquaint himself with the identity of the employees "facialwise."

[5] Cf. **Priced-Less Discount Foods, Inc.**, 162 NLRB 872; **Heck's Inc.**, 156 NLRB 760, 761.

had a uniformly enforced policy against allowing discharged employees on its premises, and Stahl had been discharged by Respondent for just cause in the latter part of May. In excluding Stahl from the store Respondent was enforcing its valid rule forbidding discharged employees on its premises. Accordingly, in these circumstances, we do not believe a finding is justified that Respondent violated Section 8(a)(1) of the Act by excluding Stahl.

4. The Trial Examiner also found that the Respondent did not violate Section 8(a)(1) of the Act by its interrogation of employee Ragle. We disagree. The Trial Examiner found that in October, Respondent's supervisor, Cavellier, approached Ragle, who was wearing a union button, and asked her if she would "like to have the Union in here." The conversation continued along this line for several minutes. Respondent up to this time had engaged in numerous unfair labor practices, including interrogation, threats of loss of benefits and discriminatory disciplinary action against this same employee. In the context of Respondent's other substantial violations of the Act, we find that this interrogation was coercive and in violation of Section 8(a)(1) of the Act.

Order

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the Recommended Order of the Trial Examiner, as modified herein, and orders that the Respondent, Central Hardware Company, Indianapolis, Indiana, its officers, agents, successors, and assigns, shall take the action set forth in the Trial Examiner's Recommended Order, as amended below.

1. Add the following paragraphs 1(e) and 1(f) to the Trial Examiner's Recommended Order, renumbering the present paragraphs 1(e) to 1(g) and 1(f) to 1(h):

(e) Enforcing in a discriminatory manner any rule pertaining to union activities on company time.

(f) Coercively interrogating employees concerning their or other employees' union membership, activities, and desires.

2. Substitute the attached notice for the notice marked "Appendix" attached to the Trial Examiner's Decision.[6]

It Is Further Ordered that the complaint herein be, and it hereby is, dismissed insofar as it alleges violations of the Act not found herein.

Dated, Washington, D. C., March 4, 1970.

FRANK W. McCULLOCH, Chairman
JOHN H. FANNING Member
GERALD A. BROWN Member
(Seal) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the National Labor Relations Board
An Agency of the United States Government

After a trial in which both sides had an opportunity to present their evidence, it has been adjudged that we violated the law by committing unfair labor practices. Accordingly, we post this notice and we will keep the promises that we make in this notice.

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[6] In the event that the Board's Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted pursuant to a Judgment of the United States Court of Appeals enforcing an Order of the National Labor Relations Board."

WE WILL NOT make, or enforce, any rule prohibiting any employee from soliciting any other employee to become a member of, or to support, Retail Clerks Union Local No. 725, or any other union, in nonselling or nonworking parts of our stores during nonworking time. As such a rule was announced in speeches given by George Reed, our vice president, on June 13, 1968, WE WILL cancel it.

WE WILL NOT question any employee as to whether such a rule has been obeyed and WE WILL NOT fire, lay off, suspend, or in any other way punish any employee for not obeying such a rule.

WE WILL NOT make, or enforce any rule prohibiting organizers or representatives of Retail Clerks Union Local No. 725, or any other union, from coming on our parking lots to solicit, or to arrange to solicit, any employee to become a member of, or to support, Retail Clerks Union Local No. 725, or any other union. As such a rule was announced in letters to employees, dated July 15, 1968, signed by Stanley M. Cohen, our president, WE WILL cancel it.

WE WILL NOT reduce your salary, or wages, or any other benefit you now have, or do anything else which will be to your disadvantage, and WE WILL NOT threaten to do any of these things for the purpose of encouraging you not to support, or not to become members of Retail Clerks Union Local No. 725, or any other union.

WE WILL NOT raise your salary or wages, or give you any benefits you do not now enjoy, and WE WILL NOT promise to do any of these things for the purpose of encouraging you not to support, or not to become members of, Retail Clerks Union Local No. 725, or any other union.

WE WILL NOT fire, layoff, suspend, fail or refuse to reinstate, or discriminate against, any employee for engaging in union activity or for joining any union. As it has been decided that we discriminated against Marilyn Ragle in this manner when we suspended her because she engaged in activity in support of Retail Clerks Union Local No. 725, WE WILL pay her for any loss of wages she suffered because we suspended her.

WE WILL NOT coercively ask employees questions about their and other employees' union membership, activities, and desires.

WE WILL NOT enforce in a discriminatory manner any rule pertaining to union activities on company time.

WE WILL NOT in any manner interfere with, restrain, or coerce you in the exercise of any rights guaranteed to you by the National Labor Relations Act. In this connection WE WILL respect your rights to self-organization, to form, join, or assist any union, to bargain collectively through any union or representative of your choice as to wages, hours of work, and any other term or condition of employment. You also have the right, which WE WILL also respect, to refrain from doing so.

All our employees are free to become or remain, or not to become or remain members of Retail Clerks Union Local No. 725, or any other union.

CENTRAL HARDWARE COMPANY
(Employer)

By ....
(Representative) (Title)

Dated ....

This Is an Official Notice and Must Not Be Defaced by Anyone

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material.

Any questions concerning this Notice or compliance with its provisions, may be directed to the Board's Office, 614 ISTA Center, 150 West Market Street, Indianapolis, Indiana, 46204, Telephone 317-633-8921.

DECISION OF THE EIGHTH CIRCUIT COURT OF APPEALS

United States Court of Appeals
For the Eighth Circuit

No. 20,199
(439 F. 2d 1321)

Central Hardware Company, Petitioner, v. National Labor Relations Board, Respondent, and Retail Clerks Union, Local 725, Retail Clerks International Association, AFL-CIO, Intervenor.	On Petition for Review and on Cross-Application for Enforcement of an Order of the National Labor Relations Board.

[March 24, 1971.]

Before Gibson and Bright, Circuit Judges, and McManus, Chief District Judge.

Per Curiam.

The petitioner, Central Hardware Company, seeks review of the National Labor Relation's Board order (reported at 181 N.L.R.B. No. 74) and the Board files a cross-application for enforcement of the order requiring petitioner to cease and desist from unfair labor practices found to be violative of §§ 8(a)(1) and (3) of the National Labor Relations Act (29 U.S.C. § 158) and affirmatively requiring the petitioner to revoke and withdraw its no-solicitation rule and to reimburse employee Ragle for a three-day loss of earnings.

The actions found to be violative of §§ 8(a)(1) and (3) of the Act occurred during an organizational campaign by representatives of the Retail Clerks Union, Local 725, Retail Clerks International Association, AFL-CIO, intervenor, at petitioner's two stores in the Indianapolis, Indiana area in 1968.[1] The petitioner (hereafter called Company) opened two retail stores on the outskirts of Indianapolis, Indiana, in the spring of 1968. The stores were designated as the East Store and the West Store. Hiring was commenced about April 15, 1968, culminating with a work force of some 125 employees for each store at the time of the openings on June 3, 1968. The Board found the Union began an organizational drive a week or so before the stores opened, but the record shows that the Company hired Edward Stahl, Jr., in April 1968 as an employee, not knowing that Stahl was an undercover agent for the Union and was paid to work full time for the Union in organizing the Company's Indianapolis stores. Stahl received full time salary both from the Union and from the Company and utilized his position to talk to the employees and solicit them to join the Union. He was instrumental in supplying a list of the employees, 80 per cent complete, to the union organizers.

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[1] The petitioner, Central Hardware Company, operated 10 retail hardware stores, 8 in the St. Louis, Missouri area and 2 in the Indianapolis, Indiana area. The petitioner is a Missouri corporation with its principal place of business in St. Louis, Missouri; thus jurisdiction is properly lodged in the Eighth Circuit (along with other circuits or districts) under §§ 10(e) and (f) of the National Labor Relations Act, as amended.

Some 9 or 10 union organizers from both outside and within the Indianapolis area conducted a blitz type campaign seeking signed authorization cards to establish the Union as the bargaining agent for the employees of both stores. During the first month of the campaign, commencing May 21, 1968, the Union received 92 signed authorization cards, but during the next three weeks of the campaign the Union only received 17 signed authorization cards. The decrease in the number of signed authorization cards was apparently due to the removal by the Union of most of its outside organizers and a decrease in activity of Indianapolis organizers who had other regular union functions to perform in connection with other employers.

The organizational campaign took place primarily on the Company's parking lots. The Company had a no-solicitation rule which it enforced against all solicitational operations in the stores and in the parking lots. A number of employees protested to the Company concerning the union organizational activity on the parking lots, complaining that they were detained in leaving the lot and were threatened; they sought protection when leaving the store at night. This complaint was, at the suggestion of management, placed in written form signed by 97 out of 125 employees at one of the stores and was directed to an executive official at St. Louis, Missouri. The signed complaint stated in effect that the undersigned employees did not want to be harassed any more by the Union and they did not wish to join this Union.

The Company accepted and expressed gratification for the complaint and instructed the Indianapolis management to keep all union organizers off the Company's premises, including the parking lots. After most of the Union's organizers had either left town or left the Company's premises, Mark Kapetanakis, a field organizer for the Union from Columbus, Ohio, and Stahl, the sub rosa union organizer, who had subsequently been discharged for cause, met on the lot of the West Store and started into the store. The store manager met them in the parking lot and told them he did not want them in the store or on the parking lot. Kapetanakis replied that he was going into the store as a customer and would not be talking to the employees about the Union. The manager again told Kapetanakis not to go into the store and if he did the police would be called. Stahl left but Kapetanakis went into the store. The police were called, talked to Kapetanakis and insisted that he leave the store. Upon refusal to leave he was placed under arrest, escorted to a police car and taken to the police station.

Shortly after the Company received the written complaint from the employees, it filed a charge of unfair labor practices against the Union. The Union in turn filed unfair labor practices against the Company on August 21, 1968, and on October 16, 1968. A combined complaint was filed by the General Counsel against the Company, the hearing of which was concluded on February 6, 1969. The Board found that the Company's employee no-solicitation rule was unlawfully broad and was discriminatorily applied, thus violating § 8(a)(1) of the Act; that interrogation of employees concerning a violation of the no-solicitation rule and the subsequent suspending of employee Ragle for violating that rule was violative of §§ 8(a)(1) and (3) of the Act; that the absence of a reasonable opportunity for the Union to otherwise reach employees and the quasi-public nature of the Company's parking lots, coupled with the allegedly unlawful non-employee no-solicitation rule, violated § 8(a)(1) of the Act; and that the Company's interrogation of employee Ragle concerning her union sympathies and a speech by vice president Reed exceeded the permissible bounds of free speech, violating § 8(a)(1) of the Act.

NO-SOLICITATION RULE

A. Employees.

The Board found that the Company's employee no-solicitation rule was overly broad and was also discriminatorily applied in that the Company allowed anti-union solicitation while taking a strict stand against all other types of solicitation. Employee Ragle was suspended for three days for violation of the Company's employee no-solicitation rule. The Company's rule on employees' solicitation was quite broad and prohibited solicitations on the Company's premises without limitation as to time or place, in the absence of Company approval. It is evident that such a broad employee no-solicitation rule is invalid as constituting an interference with the employees' rights to concerted action. As a matter of congressional policy, employees under § 7 of the Act (29 U.S.C. § 157) have the right to organize and engage in concerted action for purposes of mutual protection and collective bargaining; and employees by an amendment of the Act in 1947 also have the right to refrain from such activity. Under § 8(a)(1) of the Act (29 U.S.C. § 158), an employer must respect an employee's § 7 rights and may not interfere, restrain or act coercively with respect to these rights.

The Supreme Court in *Republic Aviation Corp. v. NLRB*, 324 U.S. 793 (1945) upheld the Board's authority to view overly broad employee no-solicitation rules as interfering with the employees' § 7 rights and thus constituting unfair labor practices under § 8(a)(1). Both the Board and the Court, in balancing the respective rights of management to conduct its own affairs and the employees to freely organize, recognized that the employer may make and enforce reasonable rules governing the conduct of employees on company time. Absent discriminatory factors, this would include prohibiting union solicitation by employees during working hours; but an employee's time outside working hours, even though on the company's premises, as during the luncheon hour, rest periods or after work, were his to use as he wishes, and the employees' activities during the non-working periods may not be unreasonably restrained. *Republic Aviation Corp. v. NLRB,* supra at 803. Therefore, any rule prohibiting employee union solicitation outside of working hours is viewed as an unreasonable impediment to self-organization and discriminatory, absent evidence that such a rule is necessary in order to maintain production or discipline.

An employer in the retail business may in addition prohibit employee solicitation in selling areas during non-working time as such solicitation could prove disruptive of the selling operation. However, the prohibition may not extend to the non-selling areas of the company's premises. *NLRB v. May Department Stores,* 154 F.2d 533, 537 (8th Cir.), *cert. denied,* 329 U.S. 725 (1946).

Also, even a valid no-solicitation rule, properly circumscribed as set forth above, may be violative of § 8(a)(1) if the rule is enforced in a disparate or discriminatory manner. *NLRB v. Electro Plastics Fabrics, Inc.,* 381 F.2d 374 (4th Cir. 1967); *Revere Camera v. NLRB,* 304 F.2d 162 (7th Cir. 1962); *NLRB v. May Department Stores,* 154 F.2d 533, 537 (8th Cir. 1946). It is thus clear that an employer violates § 8(a)(1) of the Act by a broad employee no-solicitation rule which prohibits union solicitation on all company property even during non-working periods and in non-working areas. *Republic Aviation,* *supra; Jas. E. Matthews v. NLRB*, 354 F.2d 432 (8th Cir.), *cert. denied*, 384 U.S. 1002 (1966).

The overly broad no-solicitation rule of the Company (characterized as being a matter of company policy even before it was communicated to the employees of the East and West Stores) was violative of § 8(a)(1) of the Act. Although the Company had a right to prohibit employee solicitation on company time, the overbreadth of the rule constituted interference with the employees' § 7 rights of organization. With respect to employee Ragle, the Company never made clear to her what her rights were in respect to employee solicitation, and it appears that the Board's finding of a §§ 8(a)(1) and (3) violation for her three-day suspension is supported by substantial evidence on the record.

B. Non-Employees.

We next consider the Company's no-solicitation rule barring non-employee union organizers from contacting Company employees on Central Hardware's business premises, including its parking lots. Each of the Company's stores has a parking lot located in front of and along one side of the store. The store employees park in specified areas of the lots, which accommodate about 350 cars. Other smaller businesses located nearby provide their customers with separate parking facilities. Only Central Hardware's employees and customers use the parking facilities provided at each of their two stores.

The Board made no specific finding concerning oppressive solicitation tactics practiced by union organizers in these parking lots. It did, however, specifically find that petitioner Central Hardware had made its lots accessible to the public without limitation. Applying principals enunciated in *Food Employees Union Local 590 v. Logan Valley Plaza*, 391 U.S. 308 (1968), and *Solo Cup Company*, 172 N.L.R.B. No. 110 (1968), the Board declared the Company's non-employee no-solicitation rule overly broad and found its enforcement in the instant case to be violative of § 8(a)(1).

The Company contends that restricting the use of the lots for customer and employee parking preserved the "private property" characteristics of this parking area. It argues that the area did not become available for general use by the public or for special use by union organizers. The Company alleges that since the Union failed to show that the employees were beyond the reach of reasonable union efforts to communicate with them, the record furnishes no basis for a § 8(a)(1) violation in enforcement of this non-employee no-solicitation rule. On this petition for review, the Company relies upon *NLRB v. Babcock & Wilcox Co.*, 351 U.S. 105 (1956), and the fact that the Board's determination in *Solo Cup, supra,* was subsequently reversed in *NLRB v. Solo Cup Company,* 422 F.2d 1149 (7th Cir. 1970). We briefly examine the background and circumstances of those cases. In *Babcock & Wilcox, supra,* the Court determined that an employer's refusal to permit distribution of union literature by non-employee union organizers on the company-owned parking lots did not constitute a § 8(a)(1) violation. There, the parking lots adjoined the fenced-in plant areas. In *Babcock & Wilcox,* the Court emphasized the fact that other channels of communication were available to the union organizers which would enable them to get their message to the employees. Mr. Justice Reed, speaking for the Court, observed:

> . . . [A]n employer may validly post his property against nonemployee distribution of union literature if reasonable efforts by the union through other available channels of communication will enable it to reach the employees with its message and if the employer's

> notice or order does not discriminate against the union by allowing other distribution. . . .
>
> * * *
>
> . . . The right of self-organization depends in some measure on the ability of the employees to learn the advantages of self-organization from others. Consequently, if the location of the plant and the living quarters of the employees place the employees beyond the reach of reasonable union efforts to communicate with them, the employer must allow the union to approach his employees on his property. No such conditions are shown in these records.
>
> . . . Though the quarters of the employees are scattered they are in reasonable reach. The act requires only that the employer refrain from interference, discrimination, restraint or coercion in the employees' exercise of their own rights. It does not require that the employer permit the use of its facilities for organization when other means are readily available. [351 U.S. at 112-114.]

In *NLRB v. Solo Cup Company, supra,* the Seventh Circuit followed the rationale of *Babcock & Wilcox* and rejected the Board's determination that an industrial park containing plants of eight companies, including Solo Cup, constituted a quasi-public area open to the public as well as to union organizers seeking support from Solo Cup's employees. In distinguishing these circumstances from those in *Logan Valley Plaza, supra,* the court said:

> While there were no fences surrounding the area and no guards were posted at the entrance to the [Industrial] District, the District was still private property and not open to public use. . . . None of the companies located there held itself out as being open to the public, and the general public had no reason to enter the area. [422 F.2d at 1151.]

The issue in *Logan Valley Plaza* arose in a First Amendment context. There, Weis Markets, Inc., occupied a supermarket building in a large, newly developed shopping center complex known as the Logan Valley Mall. Weis opened for business, employing a wholly non-union staff of employees, and shortly thereafter the union commenced picketing in and around the parcel pick-up area which extended along the front of the supermarket. The union pickets carried signs indicating that Weis employed non-union labor and that Weis' employees were not receiving union wages or benefits. Weis and Logan Valley Plaza obtained an injunction against this picketing in the Pennsylvania state court. The state court enjoined the pickets from trespassing on the property adjacent to the supermarket, the parking lot of the shopping center, and the parking lot entrances and exits. The Pennsylvania Supreme Court affirmed the issuance of the injunction on the ground that the pickets had trespassed under state law. The United States Supreme Court reversed that judgment, holding that a state, by the use of its trespass law could not bar picketing in the shopping center area. The Court began with the premise that the First and Fourteenth Amendments forbid a state from prohibiting peaceful picketing in a place generally open to the public, absent special factors relating to the purpose or manner of the picketing. The Court likened the circumstances to that of the company town in *Marsh v. Alabama,* 326 U.S. 501 (1946), commenting:

> ". . . In short the town and its shopping district are accessible to and freely used by the public in general and there is nothing to distinguish them from any other town and shopping center except the fact that the title to the property belongs to a private corporation." 326 U.S., at 502-503. [391 U.S. at 317]

The Court held:

> All we decide here is that because the shopping center serves as the community business block "and is freely accessible and open to the public in the area and those passing through," *Marsh v. Alabama,* 326 U.S., at 508, the State may not delegate the power, through the use of its trespass laws, wholly to exclude those members of the public wishing to exercise their First Amendment rights on the premises in a manner and for a purpose generally consonant with the use to which the property is actually put. [391 U.S. at 319-320]

We start from the premise that peaceful picketing carried on in a location generally open to the public is, absent special factors involving the purpose or manner of the picketing, protected by the First Amendment. We think it clear that union organizers in soliciting support through peaceful picketing exercise First Amendment rights. The essential distinction between *Babcock & Wilcox* and *Logan Valley Plaza* rests upon a determination as to the use of the properties in question.

In the instant case, the Board noted that the "enclaves in which respondent's stores are located also contain other business enterprises"; that no fences, gates, guards or signs bar anyone's use of the premises and that the premises in question are "accessible to the public without limitation." This situation more nearly resembles the circumstances presented in *Logan Valley Plaza* than those presented in *Babcock & Wilcox.* The Board here found Central Hardware's parking lots to be generally open to the public, to have "a quasi-public status." The record, as a whole, furnishes adequate support for this finding which then binds us upon our review. 29 U.S.C., § 160(e). See *NLRB v. Walton Mfg. Co.,* 369 U.S. 404 (1962); *Universal Camera Corp. v. NLRB,* 340 U.S. 474 (1951).

Under the mandate of *Logan Valley Plaza,* we hold the Company's non-employee no-solicitation rule to be overly broad as applied to its parking lots. Thus, we sustain the Board's determination that the Company's enforcement of this rule against the Union constituted an unfair labor practice in violation of § 8(a)(1) of the Act.

OTHER ALLEGED UNFAIR LABOR PRACTICES

The Board, contrary to the Trial Examiner, viewed Union representative Kapetanakis' arrest as an unfair labor practice. We think this finding lacks substantial support in the record. The Company had the right to bar Kapetanakis from the store; he was not a bona fide customer and his primary purpose in entering the store was to check employees, thus disrupting selling areas.

The Board also found the Company committed an unfair labor practice in a speech where vice president Reed told the employees they were receiving greater benefits than those paid to employees in comparable unionized stores and that if the employees were to select the Union as their collective-bargaining representative “all bets are off and we start from scratch.” The Board views these statements as being made in the context of “other substantial unfair labor practices as constituting a promise that existing benefits would be continued and increased if the employees refrained from supporting the Union and also as a threat that they would be discontinued or minimized if the Union was supported.”

The Board acknowledges that the employer is free to communicate its views respecting a union or union representation. If the employer's right of free speech is to be permitted and made meaningful, the employer as well as the union organizers should be allowed to communicate opinions and ideas on the relative merits of the collective bargaining process and the particular union in issue. This the employer may do as long as his statements do not contain “a threat of reprisal or promise of benefit.”

NLRB v. Gissel Packing Company, Inc., 395 U.S. 575 (1969). There is no threat of retaliation and the words spoken do not appear to contain any promise or threats. The employer certainly is entitled to state that its employees are currently being better treated than comparable unionized employees and also to convey the legal facts of life that if a union is voted as the bargaining representative the employer must bargain with the union rather than offer increased benefits directly to the employees.

The real test here is whether the employees could reasonably conclude that they were being threatened with economic reprisal. *NLRB v. Louisiana Manufacturing Company*, 374 F.2d 696 (8th Cir. 1967). There is no evidence that any employees were so intimidated and the entire speech itself appears to be within the permissible limits of § 8(c) (29 U.S.C. § 158 (c)). During the course of his speech, vice president Reed stated that the Company recognized the rights of the employees to determine for themselves if they would like to organize and, after presenting his argument against the Union's efforts, concluded, "Let me say again that the decision to organize rests with each and everyone of you on an individual basis." Neither this speech nor the subsequent actions of the Company give rise to a valid conclusion that the Company was threatening reprisal or promising benefits over and beyond the permitted general statements that the employees would be better off without selecting the Union as their bargaining agent, which in turn is merely a counter statement to the Union's position that the employees' benefits and conditions of employment would be bettered by joining the Union. There was no specific promise of an immediate increase in benefits by not supporting the Union.

The Board also found supervisor Cavellier's question to employee Ragle as to whether she would "like to have the Union in here" constituted an unfair labor practice. The Trial Examiner did not think so and neither do we. The interrogation was certainly not coercive and merely constituted an isolated questioning of an employee. There was no systematic intimidation nor any coercive connotation to this isolated interrogation. *Beaver Canning Company v. NLRB*, 332 F.2d 429 (8th Cir. 1964).

In conclusion, we therefore hold that the Company committed an unfair labor practice in its overly broad no-solicitation rules and in the three-day suspension of employee Ragle, and the Board's order with respect to those items is ordered enforced. The balance of the Board's order lacks substantial support in the record and enforcement thereof is denied.

Gibson, Circuit Judge (concurring in part and dissenting in part):

I concur with all of the per curiam except that portion of the opinion holding the Company's non-employee no-solicitation rule to be overly broad as applied to its parking lots.

The majority views *Logan Valley* as modifying *Babcock*, thus giving union organizers free access to any company premises that are quasi-public in character. They apparently equate solicitation by the union organizers to picketing—an equation which I cannot make—for the record does not disclose picketing activity by the union organizers. This is a critical distinction which the majority fails to discuss. The *Logan Valley* decision approved peaceful picketing as a protected First Amendment right on property maintained as a shopping plaza for the benefit of a number of different retail outlets and the public, noting that where an owner places his property in public use, the owner's rights are circumscribed both by statutory and constitutional rights of those who use the property. In my view, the union picketing in *Logan Valley* is a distinctly different type of communicative activity from the union solicitation activity in the instant case. The First Amendment interest in protecting peaceful picketing is obvious since picketing has as its objective the conveyance of a message to the public, but is considerably less clear here where the union's solicitation message is directed solely to the company employees and is imposed by confrontation and argument (to which some employees objected). Consequently, I view this question as limited to the statutory rights of union organizers to communicate with employees and conclude that the standards articulated in *Babcock,* rather than *Logan Valley,* are controlling.

Furthermore, I do not think *Logan Valley* is applicable because the parking lots in the instant case were not of such a public character that the owner lost or waived almost all rights of control over their use. The trial Examiner's and the Board's characterization of the parking lots as equivalent to shopping centers is not warranted by the evidence. These parking lots were solely for the benefit of the employer's customers and employees. They were not set up for the purpose of allowing "one-stop shopping." They were not public squares or the equivalent and they did not create a "cordon sanitaire." These parking lots were set up and maintained for the sole purpose of supporting the employer's business and none other. The fact that a few small stores were adjacent to the lots would not alter their character into that of a shopping center operation. In no sense of the word are these private parking lots (maintained for employees and potential customers) public streets, public squares, public parks or their equivalents.

In *Babcock* the Supreme Court held that a company can lawfully post its property against non-employee solicitation (1) "if reasonable efforts by the union through other available channels of communication will enable it to reach the employees with its message" and (2) "if the employer's notice or order does not discriminate against the union by allowing other distribution." 351 U.S. at 112. Utilizing this standard, I must conclude that the Company's non-employee no-solicitation rule is lawful.

With respect to the first aspect of the *Babcock* test, there is no substantial evidence in the record showing that the employees were inaccessible or that reasonable attempts to communicate with them were ineffective. The Union had a list of employees 80 per cent complete and had for a period of time an inside organizer; and it otherwise had unrestricted access to contact the employees at their residences. The Union could invite the employees to any union or organizational meeting and had open many of the conventional means of communication, mail, telephone, personal contacts, etc. The burden was not on the Company to show that conventional means of communication and access were open, but the contrary burden rests with the General Counsel. This is not a case of the company town controlling all avenues of access and meeting places, *cf. NLRB v. Stowe Spinning Co.*, 336 U.S. 226 (1949); or a resort hotel where the employees live on company premises, *NLRB v. S & H Grossinger's, Inc.*, 373 F.2d 26 (2d Cir. 1967); or a lumber camp where employees live on the company premises, *NLRB v. Lake Superior Lumber Company*, 167 F.2d 147 (6th Cir. 1948). The mere fact that it would be much more convenient for the Union organizers to meet with employees and accost employees on the Company's parking lots is insufficient to invalidate the non-employee no-solicitation rule under the rule enunciated in *Babcock*.

Applying the second part of the *Babcock* test to the instant case, I find that while the Board found that both the employee and non-employee no-solicitation rules were discriminatorily applied, the record does not contain substantial evidence that the non-employee no-solicitation rule was discriminatorily applied. There is no evidence of any non-employee solicitation being permitted or sanctioned by the Company. This finding is drawn from thin air, completely devoid of factual substantiation.

The majority opinion, which in effect appropriates and directs the use of the Company's parking lots for union organizational purposes, goes far beyond *Logan Valley;* it sanctions trespass and impairs personal and property rights on the altar of collectivism. The result reached by the majority is an improper balancing of the rights of management to reasonably control its private property and the rights of employees to organize; it is neither warranted by law nor supported by substantial evidence in the record. I would not order enforcement of this segment of the Board's order.

A true copy.

Attest:

Clerk, U. S. Court of Appeals, Eighth Circuit.

CONSTITUTION AND STATUTORY PROVISIONS INVOLVED

United States Constitution

Amendment No. 1

Congress shall make no law * * * abridging the freedom of speech.

Amendment No. 5

No person shall * * * be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use, without just compensation.

National Labor Relations Act

Section 7

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities * * *.

Section 8(a)(1)

It shall be an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7;

Section 8(a)(3)

It shall be an unfair labor practice for an employer by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization. * * *

[*16] **MARK KAPETANAKIS,**

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

* * * * * * *

[17] **Direct Examination**

By Mr. Fogerty

* * * * * * *

Q. By whom are you employed? A. Retail Clerks International Association.

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* Numbers appearing in brackets in text indicate page numbers of original stenographic transcript of testimony.

Q. About how long have you been employed by them? A. Approximately five years.

Q. What is your job with Retail Clerks International Association? A. Field organizer representative.

Q. Did you have occasion to be in Indianapolis in the summer of 1968? A. Yes, sir, I did.

Q. What was your occasion for being there? A. To assist the Local in organizing of the Central Hardware store.

Q. By Local you are referring to the Charging Party in this case, Local 725? [18] A. Yes, sir.

Q. Directing your attention to on or about July 22, 1968, did you have occasion to—tell us what happened on that date? A. Well, Ed Stahl who is the Local representative and myself were assigned certain people to home call of the Central Hardware Store.

* * * * * * * *

The Witness: After home calling the employees Ed Stahl and myself in separate cars went to the Central Hardware Store.

[19] By Mr. Fogerty

Q. Which store? A. On the west side.

Q. Do you know the approximate location of that store? A. It's on Lafayette Road and Thirty Eighth Street I believe.

Q. Would you tell us what happened when you went to the store? A. Yes. We parked in the parking lot and Ed Stahl and myself——

Trial Examiner: The store's parking lot?

The Witness: Yes, sir. And we started to proceed to the store. As we got about halfway from our car to the store, Mr. Hagerman who is right over there——

Trial Examiner: Let the record show that the witness is pointing in the direction of the table at which counsel for the Respondent is seated.

By Mr. Fogerty

Q. Who is Mr. Hagerman, if you know? A. The gentleman——

Q. What is his position with Central Hardware? A. He's store manager.

Q. Would you tell us what happened at that point? A. Well Mr. Hagerman told us, asked us what we were doing and we told him we were going into the store. And he told us at that time he didn't want us in the store or on the parking [20] lot, that we were harassing, supposedly harassing the employees.

Trial Examiner: Was that his word or your characterization?

The Witness: No. This is his words.

And that he didn't want us in there talking to his people on Company time.

By Mr. Fogerty

Q. What did you say, if anything, in response to this? A. Well, I told him that when I went into the store I was a customer and that I would not be talking to his people about the Union, that I was going in to look at the merchandise and buy some merchandise if I did see something that I liked.

Q. What did Mr. Hagerman say, if anything, to this? A. Well he told us that he didn't want our business. I asked him if he meant that he didn't want Union people in his store and he replied back that this isn't what he meant. And I told him that if this is what he wanted then we could put an Indian dance around his store and advertise it to the Union people that, you know, that he doesn't want Union people shopping in the store.

Trial Examiner: Your Indian dance, was that your words?

The Witness: Yes, sir. Meaning a picket line.

By Mr. Fogerty

Q. What did he say to that, if anything? [21] A. Well he, nothing, just other than I took what he meant wrong that he didn't want us in the store and not Union people.

Q. What happened then; did you leave? A. No. I told him we were going in the store and he said if we went into the store then he had orders to take action. I told him I was going in as a customer and he could do what he had to do.

Q. Did he specify what action he had orders to take? A. I don't believe so at the time.

Q. Would you tell us then what happened? A. Well I turned to Ed Stahl and told him to stay outside in case anything did happen and I went into the store by myself. I went into the sporting goods area and looked around. Then I walked through the store. Two or three employees approached me to ask me if they could help me and I said, "No," that "I was just looking around." I walked through the store and back to the sporting goods and the golf equipment department.

Q. Would you tell us what happened then? A. Well as I was looking at it I noticed a policeman coming into the store and went to the service desk area and began talking to Mr. Hagerman. Shortly after that the policeman came over to me and asked me to leave the store. He asked who I worked for and what I was doing in town.

Q. Did you tell him who you worked for? A. I told him I worked for the Retail Clerks Union and that [22] we were organizing in the Central Hardware but, you know, I was in the store as a customer shopping.

Q. Did the policeman leave? A. No. The policeman insisted that I leave the store. I tried to explain I wasn't talking to the employees on the floor, that I was just, you know, looking at the merchandise. He claimed that the Company said I was talking to the employees. And I asked him to bring whoever the employees were, you know, and have them tell me I was talking to them on Company time and he refused to do that.

Q. In other words, you offered to confront the employee? A. Right.

Q. Did this take place? A. No.

Q. Was there any other conversation? If so, what was it? A. Well the policeman said, "Well, let's go outside," and he escorted me outside and put me in the back seat of his police car.

Q. Was this a marked police car? A. Yes, sir.

Q. By a police car are you referring to an Indianapolis police car or a sheriff's car? A. City police car I believe.

Q. Were there any employees observing any of this discussion you had with the policeman? [23] A. Well I noticed employees coming to the store, this was about the time some of them were getting off and some of them were coming in, and they were looking into the car. Some of the employees were, you know, around the area in front of the store and were looking out to see what was going on.

Q. How could you tell these were employees? A, The women by the clothing, they have smocks they wear which identify them as employees.

* * * * * * *

Q. All right, you told us you were put in the back seat of the police car. Tell us what happened, if anything. A. Well, there was another policeman there, a colored sergeant I believe. Then I again tried to explain my situation of, you know, that we were trying to organize the store and I was a customer and hadn't talked to the employees. One of the policemen had made the statement that he didn't feel it was right for us to go in and talk to the [24] people on Company time, that we should either home call or have a meeting. I told him we didn't talk to them——

* * * * * * *

Like I started to say he said that we should organize them away from the store and not at the store, we should home [25] call or have a meeting to have them there.

Q. Then what happened, if anything? A. Well, the policeman called for assistance on the radio. I believe it was riot control or something on this order that handles this type of thing through the police department; I don't know.

Trial Examiner: You don't know what the policeman did?

The Witness: No. What I'm saying is I don't know what the riot control's job is.

Trial Examiner: As far as all you know really is that the policeman made a call on his radio?

The Witness: He made a call to find out what to do in a situation to the riot control.

Trial Examiner: Do you remember what he said on this call?

The Witness: He said he had a fellow at the Central Hardware that was with the Union.

Mr. Fogerty: What?

The Witness: That was with the Union and wanted some assistance, someone out there that knew what to do and a colored lieutenant came out there to handle it.

By Mr. Fogerty

Q. What did he come out in? A. I believe he came out in his own car.

Q. So it was still a second police car arrived on the scene? [26] A. Right.

Q. Then what happened? A. The three of them conversed about what to do. And the one officer came back to me and said, "Well, when I asked you in the store would you leave what did you tell me?" And I said, "No, that I wouldn't leave. But here I am outside." He said, "You're under arrest." Then he, well he called the paddy wagon and a wrecker to take my car in.

* * * * * * *

[27] Q. Could you describe for us briefly the description of the paddy wagon? A. It's a closed in vehicle with doors on the back. They led me from the police car around to the back of it where I stepped into it. It was enclosed.

Q. Was this an unmarked police vehicle? A. Well it was marked.

Q. In other words, it had something on the side? A. Yes. Indianapolis Police Department I believe. I'm not sure.

* * * * * * *

[28] Q. What happened after, you testified they put you in the paddy wagon and they took you over to your car, then what happened? [29] A. They drove me to the police station.

* * * * * * *

[32] Q. What happened after you were placed in the paddy wagon? A. I was taken to the police station.

Q. What happened when you were at the police station? A. They took all the sharp instruments from me, put me in a cell with two other gentlemen. Then after being there for about 15, 20 minutes, maybe a half hour, they took all my money and everything else away from me, then put me in another cell. Then later on they fingerprinted me, mugged me——

Q. They mugged you? A. Took my picture with a number. And put me back in the cell. I was there approximately three and a half hours before I was released.

* * * * * * *

[34] Direct Examination

By Mr. Karmel

Q. Mr. Kapetanakis, where was the paddy wagon located in relation to the store? A. Right in front of the front doors.

* * * * * * *

[35] Q. Where was the police car or patrol car located?

* * * * * * *

The Witness: It was just left of the front doors right next to the sidewalk which is right in front of the store.

By Mr. Karmel

Q. If one stood in the front of the store, inside the store, could that vehicle be seen? A. Yes, sir.

Q. From inside the store? A. Yes, sir.

Q. Could the paddy wagon be seen if one stood in the front **[36]** of the store? A. Yes, sir.

Q. Now another vehicle, the lieutenant's vehicle, drove up after the paddy wagon, is that correct, sir? A. No, before the paddy wagon.

Q. Before the paddy wagon a second patrol car drove up? A. Yes.

Q. Where did that patrol car stop? A. Right behind the one I was sitting in.

* * * * * * *

Cross-Examination

By Mr. Mattern

* * * * * * *

[37] Q. During the time you were in Indianapolis six or seven weeks, during the day you described you were in the Central Hardware parking lot, about how many of these home calls did you make on employees? A. Home calls I made approximately maybe 50, 60 home calls.

* * * * * * *

[38] Q. Tell me, if you can, the furthest distance from either of the Central Hardware Stores that you travelled to speak to one of these employees. A. About 15, 16 miles.

[39] Q. Can you remember about what the average distance was? A. Five miles.

* * * * * * *

[40] Q. Who gave you that list?

Mr. Karmel: Objection. Immaterial.

Trial Examiner: Overruled. You may answer.

The Witness: Charlie Mercer, who is organizing director of the Local.

* * * * * * *

Q. Did the list have names and addresses on it? A. Yes, sir.

Q. Did it have telephone numbers? A. Yes, sir.

Q. Did it have their job description as to what they were, checkout clerk, warehouseman? A. If we knew what they were yes.

Q. On the 50 or 60 names, can you give me an approximation of how many of those had a job description beside it? A. About three quarters of them.

Q. But all of them had a name and address and phone number? A. Well not necessarily a phone number.

Q. But they all had an address? A. Yes.

* * * * * * *

[45] Mr. Mattern: We contest certain aspects of the allegation there is a rule barring Union organizers from the parking lot. We contest that allegation.

We admit the no solicitation rule is at the present time in full force and effect.

* * * * * * *

[51] Now answer the question: Did you show that card to Mr. Hagerman?

The Witness: No, I didn't.

* * * * * * *

[53] Q. You stated you come to the store where an organizational attempt was going on solely as a customer. What were you going to buy?

Mr. Karmel: Objection.

Trial Examiner: Overruled.

The Witness: Well, I was going to look at some golf equipment.

By Mr. Mattern

Q. That is all you were going to do is look at golf equipment? A. Not necessarily.

Q. What else were you going to do? A. I looked to see who the employees are facialwise, who is working and who I can home call.

Trial Examiner: Who?

The Witness: Who I can home call.

By Mr. Mattern

Q. You state you did not go in there to talk to anybody? A. No, sir, I didn't.

Q. You did not go into that store at any time or on that date to explain to any of these employees their benefits of self organization under the National Labor Relations Act, is that correct? A. That's right.

Q. How many times did Max ask you not to come in the store? [54] A. Twice.

Q. How far away from the store were you the first time?

Trial Examiner: Max I take it is Mr. Hagerman?

Mr. Mattern: I'm sorry. Max Hagerman.

The Witness: We were approximately 35, 40 feet away from the front door.

By Mr. Mattern

Q. Was Mr. Hagerman between you and the front door? A. No. I believe he was off to my left.

Q. And he asked you not to go into the store? A. He did.

Q. And he asked you to please leave the parking lot? A. He told us he didn't want us in the store or on the parking lot.

Q. Did he ask you to leave? A. Yes.

Q. Now you say he asked you the second time to leave. How far—— A. We were in the same immediate area we were before.

Q. You had not moved from that area? A. No.

Q. Obviously you had made some move toward the store or he would not have asked you, isn't that correct? A. I told him I was going in and he said, "Well, we don't want you in our store. We don't want your business."

* * * * * * *

[56] Q. The policeman, did he come directly back to you? A. Yes.

Q. Did you say Max pointed to you or anything? A. No. I think he nodded his head that I was over there.

Q. Were you there by yourself? A. Yes, sir, I was.

Q. Was anybody else around you? A. No.

Q. Was the policeman loud when he came over to you? A. No.

Q. Was he quiet? A. Pretty much so.

Q. He talked in a normal tone of voice? A. Yes.

Q. There was still nobody around you? A. Like I say, I was pretty concerned with the policeman at the time.

Q. I asked the question was there anybody around you? A. I didn't observe anybody at the time.

* * * * * * *

[59] Q. When these other police cars began to arrive, did you observe any supervisors or employees come out and direct them where to park? A. No.

Q. To the best of your knowledge, they just parked wherever they wanted to out there? A. I believe so.

Q. Now, when you went down to the police station, did any Central Hardware employees or supervisors appear during this booking formality? A. I didn't see any.

Q. How about at the trial the next day? A. I didn't see any there either.

* * * * * * *

[60] Q. Did anybody besides you testify? A. Yes.

Q. Who? A. The policeman.

Q. Did anybody from Central Hardware testify? A. Not that I can recall.

Q. Was anybody there from Central Hardware in the court room? A. I didn't see anyone.

* * * * * * *

Redirect Examination

By Mr. Fogerty

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Mr. Fogerty: I will rephrase the question.

When you made these 50 or 60 house calls, how many [61] people out of these 50 or 60 did you actually talk to?

Trial Examiner: Do you mean who worked in the store?

Mr. Fogerty: Yes.

The Witness: About 7.

By Mr. Fogerty

Q. About how many? A. Seven to ten.

Q. So when Mr. Mattern asked you whether all the people you talked to worked for Central Hardware and you said they all did work for Central Hardware there were 7 or 10 that all worked for—— A. Right.

Q. Now you testified that when Mr. Mattern asked you how far away you went in making the house calls and I believe you testified the furthest was 15 or 16 miles. You also testified you had the addresses. Tell me of these addresses were there any rural route addresses? A. A few of them were.

Q. How many? A. A few of them were.

Q. How did you find out where these people lived? A. By a hunt and peck system of going out in the rural areas anyway and trying to find out if such and such a person lived in that area.

Q. Did they all have Indianapolis addresses?

[62] Trial Examiner: When you say rural route do you mean like R. F. D., so and so?

Mr. Fogerty: Yes. In Indiana many of the people have, for example, my address is Michael Fogerty, Rural Route 7, Greenfield. As a matter of fact, I don't live very close to Greenfield at all.

Trial Examiner: That is what I wanted to know.

By Mr. Fogerty

Q. Were all these 50 or 60 addresses you had Indianapolis addresses? A. No.

Q. About what percentage were Indianapolis addresses? If you know. A. Three quarters, half, something like that.

* * * * * * *

[66] **MAX M. HAGERMAN,**

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

* * * * * * *

Direct Examination

[67] By Mr. Fogerty

Q. Where are you employed, Mr. Hagerman? A. Central Hardware Company.

Q. In what position are you employed at Central Hardware? A. Group manager.

Q. What is that position with relation to the two Indianapolis stores at Central Hardware? A. Actually, I'm over all selling, essentially all functions of the two operations.

* * * * * * *

Mr. Fogerty: Are you the manager of either one of these [68] stores?

The Witness: I serve as store manager over the west store, supervisor over the east.

Trial Examiner: What over the east.

The Witness: Supervisor.

Trial Examiner: Do you mean somebody else in the east store is the manager?

The Witness: Store manager.

Trial Examiner: Is he subordinate to you?

The Witness: Yes, sir.

* * * * * * *

[79] Q. Directing your attention to the early part of July, 1968, [80] you had occasion to question an employee in one of your stores by the name of Larry Stuck, you ques-

tioned him as to where he secured a Union authorization card, did you not? A. I don't remember whether it was early July. Actually, I did not question him really about the card.

Q. You did not ask him any questions at all? A. No, sir.

Q. Do you recall Mr. Stuck being questioned, you do recall that, do you not? A. Not in essence. Actually, the card was brought to me.

Q. You did not talk to Larry Stuck at any time after that, did you? A. I talked to Larry Stuck but he brought the card to me.

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Q. Is it not true that you were present when Mr. Reed who you testified as being the director of the stores who questioned Larry Stuck as to where he got the card? A. Yes, sir, I was.

Q. Where did this take place? A. In my office.

Q. But you don't remember the date? A. No, I don't remember the date.

Q. You were also present when Mr. Reed questioned [81] Marilyn Ragle about this card? A. Yes, sir.

Q. This also took place in your office, did it not? A. Yes, sir.

Q. And that is at the west store of Central Hardware? A. Yes, sir.

Q. Do you recall the date that questioning took place? A. No, sir, I don't.

Q. How many times were you present when Mrs. Ragle was questioned about the card? A. I think it was the same day. I think it was twice.

Q. It was twice that you remember? A. Right. As I recall I think it was in the same day.

Q. You are not really sure whether it was in the same day, are you? A. I'm not positive.

Q. It could have been two separate days? A. Possibly.

* * * * * * * *

[86] Q. Mr. Hagerman, you did have occasion on or about July 22, 1968, to observe Ed Stahl and Mark Kapetanakis pull into the parking lot in the west store, did you not? A. I didn't see them pulling in, no.

Q. Did you have occasion to go out and talk to them, didn't you? A. At that time I knew Ed Stahl.

[87] Q. That was not the question. You did go out and talk to—— A. I went out and talked to two men.

Q. One of whom was? A. Ed Stahl.

Q. And the second one was who? A. At that time I did not know.

Q. You know now, do you not? A. Yes. Kapetanakis.

Q. You went out and told them that they were not welcome as customers, did you not? A. That is correct.

Q. Either in the store or on the parking lot? A. That is correct. And many other people would do the same thing.

Trial Examiner: Mr. Witness——

Mr. Fogerty: I make a motion to strike.

Trial Examiner: The motion will be granted.

* * * * * * * *

Q. However Kapetanakis after you told him they were not welcome as customers he said he was going in the store anyway, didn't he? [88] A. Yes. He said, "I'm going in that God damn store no matter what the hell you say" or something to that effect.

Q. Or something to that effect. And he proceeded to go into the store, did he not? A. Yes, sir.

Q. And you told him that if he went in the store you had orders to call the police, didn't you? A. That is correct.

Q. And you did call the police, did you not? A. Yes, sir.

Q. The policeman did arrive, did he not? A. Yes, sir.

Q. And you pointed out the man you wanted out of your store to the policeman, did you not? A. Yes, sir.

Q. Mr. Kapetanakis was standing at or near the sporting goods department when you pointed him out to the policeman, wasn't he? A. Yes, sir.

Q. Now, the sporting goods department is not too far away from the checkout area, is it not? A. That's correct.

Q. And you have what, three or four checkout lanes there, have you not? A. More than that.

[89] Q. And you have cashiers that run those checkout lanes, do you not? A. Not all of them at all times.

Q. But at least most of the times you have more than one cashier at the checkout? A. Generally.

Q. In fact it is probably close to three or four checkouts open? A. It would average that.

Q. Where Mr. Kapetanakis was, was near the service desk in the store, was it not? A. I wouldn't call it near the service desk.

Q. Well, was Mr. Kapetanakis over 50 feet away from the service desk? A. I would say probably somewhere around there.

Q. Around 50 feet. And there were employees all through this area, were there not? A. No.

Q. But there were cashiers, were there not? A. Yes, sir.

Q. And there were people at the service desk, were there not? A. Yes, sir.

Q. And these people or employees, no employees at the service desk? A. Yes.

[90] Trial Examiner: You are talking at the time of this incident were there employees at the service desk?

The Witness: Yes. Or an employee.

Trial Examiner: Tell me what is a service desk?

The Witness: Information booth type of thing for return of merchandise, this sort of thing.

By Mr. Fogerty

Q. And employees stationed at these areas, in other words, the service desk and the checkout lanes had a full view or an unobstructed view of the policeman talking to Mr. Kapetanakis, did they not? A. It wasn't obstructed by something, a form.

* * * * * * *

[97] Mr. Fogerty: Counsel for General Counsel proposes a stipulation that the exhibit marked as General Counsel Exhibit 3 which bears the date at the top of the page July 15, [98] 1968, and signed by Stanley M. Cohen, president, which is on Central Hardware stationery, was distributed to the Indianapolis employees at both of the stores on or about or within four or five days thereafter of the date appearing at the top of the exhibit. And then General Counsel would move for the admission of General Counsel Exhibit 3.

Trial Examiner: Is that stipulation agreed to identifying the document?

Mr. Mattern: Yes.

* * * * * * *

Q. Now, Mr. Hagerman, the rules of the Company prohibiting solicitation on the Company premises on Company time or off Company time as contained in Mr. Reed's speech which is attached to your affidavit, those rules were never published [99] at the Indianapolis stores at any time before June 13, were they? A. Not orally, no not his speech wasn't published.

Q. Were the rules ever published? A. Yes, I believe at one time some of them were published by the clock.

Q. What do you mean by some of them? A. In the one rule I believe at some time or other it was published.

* * * * * * *

[100] Q. Yes. But the rule barring Union organizers from the premises there was no rule posted or published or otherwise [101] promulgated—— A. No. I see the point.

Q. ——by Respondent prior to when this letter came out? A. Not posted, no. Nothing about the Union at all. Only the no solicitation rule.

* * * * * * *

[106] Mr. Fogerty: I propose a stipulation that what has been marked as General Counsel Exhibit 4 is a detailed layout of the store premises which is outlined in yellow crayon along with a detailed layout of the surrounding premises adjacent to Central Hardware location on the west side and the address of this west side, by the way, is——

The Witness: 4501 West Thirty Eighth.

Mr. Mattern: Is that what is generally referred to as the west store in this case?

[107] The Witness: Right.

Mr. Mattern: And what is the address of the store that has generally been referred to as the east store?

The Witness: 3702 North Shadeland.

Mr. Fogerty: I propose that what has been marked as General Counsel Exhibit 4 be introduced in evidence with the stipulation that it is the detailed layout of the premises.

Trial Examiner: Let us take one thing at a time. Do you agree this is a detailed layout?

Mr. Mattern: Yes, sir.

Trial Examiner: Do you want to offer it in evidence?

Mr. Fogerty: I already have.

Trial Examiner: Do you have any objection?

Mr. Mattern: No objection.

Trial Examiner: There being no objection it will be received in evidence, General Counsel Exhibit 4.

(The document heretofore marked General Counsel's Exhibit No. 4 for identification was received.)

Trial Examiner: You may proceed.

Mr. Fogerty: Mark this as General Counsel Exhibit 5.

(The document was marked General Counsel's Exhibit No. 5 for identification.)

Mr. Fogerty: General Counsel proposes a stipulation that what has been marked as General Counsel Exhibit 5 is a detailed layout of the premises of Central Hardware Store which has been [108] referred to as the east store which is located at 3702 North Shadeland Avenue, Indianapolis? And it also sets forth the premises of the surrounding area.

Trial Examiner: Is that stipulation agreeable?

Mr. Mattern: That stipulation is agreeable.

Mr. Fogerty: I move the introduction of General Counsel Exhibit 5.

Trial Examiner: Any objection?

Mr. Mattern: No objection.

Trial Examiner: It may be received.

(The document heretofore marked General Counsel's Exhibit No. 5 for identification was received.)

Trial Examiner: Is the one that has the designation west is that the one I have here?

Mr. Fogerty: Yes. Here is a copy of the east.

Trial Examiner: The one you were going to offer is like the one I have before me, it has the word west at the top?

Mr. Fogerty: Yes.

Trial Examiner: Proceed.

By Mr. Fogerty

Q. I show you what has been introduced in evidence as General Counsel Exhibit 4 and I ask you to study that. It has been stipulated that the area outlined in yellow is the property line of the area leased by Central Hardware, is that correct? **[109]** A. Yes, sir.

Q. Now I take it you are familiar with the west store location? A. Yes, sir.

Q. You have your office out there, do you not? A. Yes, sir.

Q. Now this diagram shows the street, up here at the top, West Thirty Eighth Street. Are you familiar with that street? A. Yes, sir.

Q. Could you tell us that is a pretty busy street, is it not? A. Thirty Eighth Street at times is very busy.

Trial Examiner: A lot of automobile traffic, is that what you are saying?

The Witness: Yes.

Mr. Karmel: Do you have any objection to my standing here and watching?

Trial Examiner: No, sir.

By Mr. Fogerty

Q. The speed limit along Thirty Eighth Street is about 35 miles per hour, is it not? A. Yes, sir.

Q. There are no sidewalks along that area, are there? A. There's no sidewalks.

Q. This diagram shows McDonald's at the upper left hand corner of the property that has been outlined in yellow, is it not? [110] A. Yes, sir.

Q. Adjacent to the upper left hand corner, what does that refer to, McDonald's? A. It's a hamburger place.

Q. Right now there is an entrance right next to that McDonald's hamburger place, is there not? A. Yes, sir.

Q. That entrance is from Thirty Eighth Street? A. Yes, sir.

Q. That is the only entrance there is from Thirty Eighth Street. A. From Thirty Eighth Street, yes.

Trial Examiner: Are you suggesting that in order to get into your parking lot, Mr. Witness, you have to go through McDonald's parking lot?

The Witness: No. This entrance here actually is into——

Trial Examiner: The witness is pointing to what appears to be two lines on the right of the McDonald location as being the entrance to the parking lot of Central Hardware.

By Mr. Fogerty

Q. That is the entrance to South Thirty Eighth Street, is it not? A. Yes, sir.

Q. The customers that go to McDonald's, they have to enter the same place, do they not? [111] A. Yes, that's correct.

Q. There is no other way to get into McDonald's other than going in this way, is there not? A. That's right.

Trial Examiner: When you say "this way," Mr. Fogerty, please designate for the record what you are referring to.

By Mr. Fogerty

Q. There is no other way for people to get into McDonald's other than going through the entrance on Thirty Eighth Street which is on your property, is it not? A. That is correct.

Mr. Fogerty: For the ease in identification I am marking Thirty Eighth Street entrance with the letter A.

Trial Examiner: You may do so.

By Mr. Fogerty

Q. Now to the right of the Central Hardware property as has been outlined in yellow, there is a building marked Carpet Fashions, is there not? A. At the present time.

Q. It is there, is it not? A. Now.

Q. There is also a building in front of that which is marked on this diagram as Morris Plan, is there not? A. Yes, sir.

Q. There is a savings and loan association by that name [112] located in that building, is there not? A. Yes, sir.

* * * * * * *

[122] Q. Mr. Hagerman, at any time since July of 1968 has there been any kind of a fence, gate or other obstruction along the east edge of your property as shown here in the diagram with a yellow pencil? A. Yes, there have been lines.

* * * * * * *

[123] Q. A line? A. Yes.

Q. What type of a line? A. Like a rope.

* * * * * * *

Q. Is there a rope across there at the present time? A. No, sir.

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[126] Q. That rope has not been across there for some time, is that not correct? A. Depending on what you mean by some time.

Q. It has not been across there since October, has it, October of 1968? A. October, November, somewhere along there.

Q. Is it your testimony that prior to October or November 1968, the only way you could get out of the Central Hardware parking lot was to go through the exit marked A? [127] A. Essentially.

Q. Essentially. Was there some other way? A. Very hard to get out.

Q. How were you able to get out before then?

Trial Examiner: Other than through A.

Mr. Fogerty: Other than through A.

The Witness: There was, actually they were putting a lot over next door and they had gravel, big gravel there initially.

* * * * * * *

Q. On the southeast edge of the Morris Plan Building, right? A. Yes. You could get by there. Certainly it was risky but it was one way through anyway.

Now then they came in here across the gravel.

Q. Came in, by here do you mean in an area marked in the diagram Fashion Square? A. Right.

* * * * * * *

[128] Q. Was your testimony just a moment ago that prior to October or November essentially the only way you could get out of the Central Hardware parking lot or into it for that matter was through the exit marked A? A. Yes, sir.

Q. When I questioned you about essentially you said, well, there was another way but it was risky.

Now, that time that you were referring to was before [129] October or November, is that not correct? A. That is correct.

Q. Because after October or November you could proceed through exit B and exit C, is that not correct? A. Yes.

Q. Okay. So the gravel was there some time between June and October, is that correct? A. Right.

Q. Are there any signs in that parking lot posted or have there been any signs in that parking lot at any time since June of 1968, posted to the effect that there would be no solicitation on that parking lot? A. You are talking about——

Q. At any time since June of 1968, have there been any signs posted at the parking lot, at the west store, to the effect there is no solicitation allowed on that parking lot? A. Not on the parking lot.

Q. Are there any guards posted at that parking lot? A. Armed, do you mean?

Q. Armed or unarmed. A. We have a security man.

Q. And he is posted on the parking lot? A. Not on the lot.

Q. Where is he? A. He's inside and out.

[130] Q. Inside? A. And outside.

Q. Is it his duty to check the people who drive into your lot as to whether they are a customer of yours? A. No.

* * * * * * * *

[132] Q. Now, the employees that work at your store, employees that work at both stores, the west store and the east store, practically all these employees drive to work, do they not? A. Yes, sir.

Q. Or at least ride to work with somebody else? A. Yes, sir.

Q. In fact, you don't know of any employees that walk to work, do you? A. Yes, there are a few. I know of two or three just immediately.

* * * * * * *

[133] Q. How many employees do you have employed at the west store? A. Approximately 125, full and part-time.

Q. Now, that is at the present time, is it not, or approximately at the present time? A. (Nods head to signify affirmative.)

Q. Back in June or July, how many employees did you have employed at the west store? A. About the same amount.

Q. Now, of those 125 employees, how many of them do you know that arrive at work by some other means than driving or riding in an automobile? A. Of course, I'm not familiar with how they all get there. Four or five I know walk.

Q. Now, with reference to the east store, approximately how many employees do you have employed there now? A. About the same number.

Q. As far as June and July, 1968, was concerned, the same number? A. Pretty close.

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[134] Q. Mr. Hagerman, is it not true that the Company policy as far as employees being on lunch time or break time, the Company policy does not prohibit them from leaving the store, does it? A. No, sir.

Q. In fact, they go out in the parking lot and eat their lunch if they want to?

Trial Examiner: We are talking about both stores?

Mr. Fogerty: We are talking about both stores.

The Witness: Yes, sir.

By Mr. Fogerty

Q. They can, can they not? A. Yes, sir.

Q. There is no rule against that, is there? A. No, sir.

Q. I suspect some of them even go home, do they not? A. Yes, sir.

Q. Now, I show you what has been introduced in evidence as General Counsel Exhibit 5. I assume you recognize that as the [135] layout of what is known as the east store of Central Hardware? A. Yes, sir.

Q. The property leased and controlled by Central Hardware is that outlined with a yellow crayon, is it not? A. Yes, sir.

Q. Now this layout shows, does it not, at the bottom, towards the bottom of the diagram, it shows Shadeland Avenue, does it not? A. Yes, sir.

Q. Also known as Road 100? A. Yes, sir.

Q. Shadeland Avenue is a pretty busy street, isn't it? A. I'd say a fairly busy street.

Q. It is a four lane highway, is it not? A. Four lane.

Q. And the speed limit on Shadeland Avenue is around 35 or 40 miles an hour, is it not, posted? A. Something like that.

Q. At various times through the day, particularly when the factories south of there are letting out their employees, it can be a very busy street, is that not correct? A. Yes.

Q. It would be dangerous to stand out in the street, would it not? [136] A. Dangerous to stand in any street.

Q. From your observation it would be particularly dangerous to stand in the street on Shadeland Avenue? A. To stand out in the street I think it would be, yes, sir.

Q. There are no sidewalks between Shadeland Avenue and the parking lot, is there? A. There's no sidewalks. There are islands.

Trial Examiner: What did you say?

The Witness: There are islands.

Trial Examiner: In the middle of the street?

The Witness: Adjacent to the streets.

Mr. Fogerty: Let the record show that the witness is referring to the oval diagrams immediately east of the eastern boundary of the Central Hardware property line.

By Mr. Fogerty

Q. Now, there are four exits there, are there not, on the east side of the parking lot on to Shadeland Avenue? A. I think there's three.

Q. Four. A. This is supposed to be an entrance and an exit.

Q. Is it marked as such? A. It's used as such. It is not marked.

Mr. Fogerty: Let the record show the witness is referring to the two passageways in the middle of the parking lot diagram.

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[138] Q. Is there not a means of egress from your property line on to the property immediately south known as the Blue and White Truck Stop? A. There is a means.

Q. And get through there without going on to Shadeland Avenue, can you not? A. Yes, sir.

Q. Now, in addition to these exits and—by the way, you can enter through these passageways I have referred to as exits also, can you not? A. Yes, sir.

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[139] Q. In addition to the exits we have discussed so far, there is an exit and an entrance from your property over to Thirty-Eighth Street, is there not? A. Yes, sir.

Q. That is at the east store I am referring to. A. Yes, sir.

Q. There is a little road in there, is there not, that you can use? A. Yes, sir.

Mr. Fogerty: Let me mark that. That would be right there. Mark that as D to E, right, that is the entrance?

The Witness: (Nods head to signify affirmative.)

By Mr. Fogerty

Q. Now, that road would be what I have marked on this [140] document as from D to E, would it not? A. Yes, sir.

Q. That road would get you out to Thirty-Eighth Street? A. Yes, sir.

Q. Thirty-Eighth Street at that point is a fairly busy street, is it not? A. A fairly busy street.

Q. By the way, one other point I neglected to ask with reference to the west store. Lafayette Road and Thirty-Eighth Street are fairly busy highways also, isn't that true? A. Yes, sir. Lafayette Road isn't anywheres near as busy as Thirty-Eighth.

Q. But it is a busy street, is it not? In fact, you locate your stores near so you can get a lot of people to pass by your stores, isn't that true? A. Yes, sir.

Q. You don't locate your stores in inaccessible areas, do you? A. No, sir.

* * * * * * *

[141] Q. The parking lots at the, I believe they are both labeled, on both diagrams, as parking lots, they are under the control of Central Hardware, are they not, the area labeled on General Counsel Exhibit 5 as paved drives, that is a parking lot, is it not? A. Yes, sir.

Q. That is under the control of Central Hardware, is it not? A. Yes, sir.

Q. Now, referring to General Counsel Exhibit 4, that area labeled parking that is under the control of Central Hardware, is it not? A. Yes, sir.

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[142] Q. You testified there are about 125 or so employees at each of the stores, I believe? A. Yes, sir.

Q. Does it remain fairly constant? A. Yes, sir.

Q. Through the time they have been here some of these employees come from areas 10, 15, perhaps 20, 25 miles away from the stores where they work, is that not correct? A. Some more. Some less.

Q. Some even more than 25 miles, is that not correct? A. No. I said some come that far, some less.

Q. Some of them live only 3 or 4 miles from the store? A. Yes, sir.

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Direct Examination

By Mr. Karmel

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[150] Q. You knew at the time, did you not, that speaking of the time they were on the parking lot when you had this conversation with them, that Mr. Kapetanakis was associated with the Union, didn't you? A. I knew he was associated through Ed Stahl.

Q. You knew at the time that Ed Stahl was associated with the Union, didn't you? A. I did at the time, yes, sir.

* * * * * * * *

[153] Q. Did you say to Kapetanakis, "You can go in the store but don't talk to employees."? A. No, sir. Because I didn't want him as a customer.

Q. Wasn't one of the reasons that you did not want him as a customer his association with the Union campaign that was going on among the employees? A. That would only be a part of it.

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[154] Q. How many meetings were there in which he made the speech? A. Four.

Q. And it is your testimony that he read the same thing at each of the four meetings? A. Yes, sir.

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[161] Q. Now, did any member of management at any time since June 13 withdraw the rule as stated by Mr. Reed on June 13? A. No, sir.

* * * * * * *

[164] Mr. Karmel: Now, today, sir, what is there at the location marked Carpet Fashions?

The Witness: Carpet Fashion Store, Pizza Inn——

Trial Examiner: What?

The Witness: Pizza Inn. And Heritage House which is a gift shop.

By Mr. Karmel

Q. There is marked on this document the phrase, proposed tire service center. Do I understand there is no structure at that point at this time? A. No, sir.

Q. That is merely proposed? A. By us.

Q. A building that you would operate? A. Yes, sir.

Q. Now, going to General Counsel Exhibit 5, there is marked on the property a phrase, car wash. Is there a car wash structure at that point? A. Yes, sir.

[165] Q. Is that operated by Central Hardware, that structure? A. No, sir.

Q. Who operates the car wash structure? A. I don't know.

Q. Is there an auto tire service store at the point indicated on the map? A. There's one being built by us.

Q. That is the one you are building here.

Now, there is a structure marked Al Harding Office Building. You laughed, sir. So you will have to let me in on your joke. Is there such a structure? A. Yes, sir.

Q. Is it an office building or is that the joke? A. It's a construction company and a warehouse.

Q. Now is this car wash in operation? A. Yes, sir.

Trial Examiner: Are you saying yes?

The Witness: Yes, sir.

By Mr. Karmel

Q. Now if I may, sir, I will use myself as an example, sometimes it is easier, if I were to go in the west parking lot and I parked my car in the Central Hardware parking lot and I go in and I do some shopping at Central Hardware and I then want to purchase some food at McDonald's, I don't have to move my car, do I, I can leave it right where it is in your lot, [166] can't I? A. You could if you wanted to walk there.

Q. Yes. And I can do the same today, if I park at Central Hardware I can walk over to the Morris Plan Bank, can't I, or I can——

Trial Examiner: Are you saying yes?

The Witness: Yes.

Mr. Karmel: And then shop and do my business at Morris Plan Bank, can't I, or I can shop——

Trial Examiner: Are you saying yes again?

Don't nod your head because the reporter can't describe a nod.

The Witness: Yes.

By Mr. Karmel

Q. There is parking in Fashion Square, is there not? A. Now.

Q. Well, yes, I understand now.

There is shopping in Fashion Square now although you don't have those lines on the map——

Trial Examiner: Shopping or parking?

Mr. Karmel: Parking spaces.

By Mr. Karmel

Q. So one could park in front of the bank and walk over to Central Hardware, for example, isn't that correct? A. They could. But it would be unusual if they do.

[167] Q. How do you know it would be unusual? A. Most people would park over here, park at the Morris Plan——

Trial Examiner: Here, you are referring to what?

The Witness: If they are going to Morris Plan they would park there.

By Mr. Karmel

Q. If they go to Carpet Fashions, would it be unusual then for them to park at Carpet Fashions and go to Central Hardware or vice versa? A. Yes, sir, it is unusual.

Q. When you say unusual, it does happen though, doesn't it? A. Sure it could because they could walk across.

Q. You do not discourage that kind of traffic, do you? A. We wouldn't turn them down, no.

* * * * * * * *

[170] The area which is marked Fashion Square and the area which is marked parking on west, General Counsel Exhibit 4, that that is an open area today?

The Witness: Yes, sir.

By Mr. Karmel

Q. And that one can drive in an unobstructed manner from West Thirty Eighth Street entrance A, past McDonald's, past the Central Hardware Store, through Fashion Square between Carpet Fashions and Morris Plan Building out through entrances B or C without any obstruction, say, for normal traffic or normal parking? A. Yes, sir.

Q. There are no signs on this lot at any point saying entrances or exits, are there, which point to entrances or exits? A. No, sir.

* * * * * * * *

Q. There is nothing in your parking lot which states to [171] the public, reserved for customers of Central Hardware only, or words to that effect?

The Witness: No, sir.

Trial Examiner: This relates to either one, the east or west store?

The Witness: Yes, sir.

Mr. Karmel: By the same token, sir, there is nothing to your knowledge in the Fashion Fair Building saying, reserved for Fashion Fair customers only?

The Witness: Not to my knowledge.

* * * * * * * *

[172] Mr. Fogerty: General Counsel proposes a stipulation that Mr. Ted Kaptain K-a-p-t-a-i-n is and was at all times material employed by the Respondent in the position of a full-time merchandise manager and is and was at all times material a supervisor of the Respondent as defined by, as a supervisor within the meaning of section 2(11) of the Act. It is my understanding there is an agreement.

Mr. Mattern: Yes.

Trial Examiner: All right. The stipulation will be received.

Mr. Fogerty: Mark this as General Counsel Exhibit 6.

(The document was marked General Counsel's Exhibit No. 6 for identification.)

Mr. Fogerty: General Counsel proposes a stipulation that the document marked as General Counsel Exhibit 6 [173] consisting of 8 pages is a list of the names and addresses of employees; both full-time and part-time?

Mr. Mattern: (Nods head to signify affirmative.)

Mr. Fogerty: ——of the Respondent at both its east and west stores.

* * * * * * * *

Mr. Fogerty: For the payroll period ending on or about June 15, 1968.

Again it is the understanding of General Counsel there is no objection to the introduction of General Counsel Exhibit 6 and the stipulation.

Mr. Mattern: No objection.

Trial Examiner: There being no objection the document is received in evidence, General Counsel 6.

(The document heretofore marked General Counsel's Exhibit No. 6 for identification was received.)

Mr. Fogerty: Just one more item. The purpose of General Counsel Exhibit 6 is to show that some of these employees live places other than in the City of Indianapolis [174] and thereby showing the geographical distribution. Mark this General Counsel Exhibit 7.

(The document was marked General Counsel's Exhibit No. 7 for identification.)

Mr. Fogerty: General Counsel would move to introduce what has been marked as General Counsel Exhibit 7 as being an official map of the State of Indiana, published by the State of Indiana, for whoever has to consult this record so that they can find the cities listed on these names and addresses and see where they are in relation to Indianapolis.

Mr. Mattern: No objection.

Trial Examiner: There being no objection the document is received as General Counsel Exhibit 7.

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[180] **Cross-Examination**

By Mr. Mattern

* * * * * * *

[193] Q. Again referring to the west store, is there a designated area for the employees of the west store to park? A. Of Central Hardware?

Q. Yes. A. Yes, sir.

Q. I ask you now to take the orange crayon again and mark, if you can, on General Counsel Exhibit Number 4 the area that you have designated for employees of Central Hardware, west store, to park where they are when [194] they are on their working hours. A. Okay.

Q. I will ask you while you have the same orange crayon in your hand to block in the areas that you have now marked for employees parking, show that in solid orange color wherever they park.

Now, I will ask you to take the duplicate copy of General Counsel Exhibit 4 which is in front of his Honor and to repeat the same process.

Now, it is now designated on there you have three areas on each of the exhibits colored generally solid in orange. And is it your testimony that this is the area that you have designated for the employees at the west Central Hardware Store to park while they are on their working hours? A. Yes, sir.

* * * * * * *

[196] Q. Is there any unusual item of topography that separates the Central Hardware lot from the McDonald lot? A. There is a curbing there that separates part of Central Hardware and McDonald's. But there's an opening through.

* * * * * * *

The Witness: I was just going to say there's an opening [197] driveway between Central Hardware lot and McDonald's lot.

* * * * * * *

[202] Now, I hand you the copy of General Counsel Exhibit 5, which his Honor has been observing, and ask you to conform it to the one you have just finished.

Now, I draw your attention to the area you have designated on here as the property of the car wash which you have outlined in orange and the areas where the Central Hardware property is contiguous to, that is, touching, the property of the car wash, are there any unusual items of topography? A. There's about a 6 foot fence.

[203] Q. Who put the fence up? A. I don't know. We didn't.

Q. Was it there when you moved in? A. Yes, sir.

Q. Have you maintained it or does the car wash maintain it? A. I believe it's maintained by the car wash.

Q. Now, is it your testimony that this fence at every point where Central Hardware property touches property designated as the car wash that this fence is separating to? A. Yes, sir.

Q. Is there any way that you know of that a customer of the car wash could drive directly from their property on to your property? A. Absolutely not.

Q. Where would they have to go to get on to your property in the nearest way? A. They'd have to go to Shadeland Avenue.

* * * * * * *

[208] Q. Have you designated an area at this east store for the employees to park their cars? A. Yes, sir, we have.

Q. Must they always park their cars there? A. Yes, sir.

[209] Q. I ask you to take the orange crayon again—I'm sorry, strike that—take the pink crayon again and outline in pink the areas which you have heretofore designated as employee parking at the east store.

Would you again, as you outline these areas in pink, would you block them, that is, color them in pink?

I ask you at the same time to do the same to the copy of the General Counsel's Exhibit which his Honor has been observing.

I now draw your attention to the area generally between what has heretofore been marked as point D and point E, on General Counsel Exhibit 5.

I notice from the colors on this plot land that apparently Central Hardware does not own any connecting property to east Thirty-Eighth Street? A. No, sir.

Q. Is it possible for a customer or for an employee on his way to work to travel from Thirty-Eighth Street to either the employee parking lots or the main parking lot of Central Hardware, by moving generally from point E to point D? And if there is a way, please describe it. A. Yes, sir, there is a means. There is a black top road.

Q. How wide is this road? A. Twenty-four, 26 feet.

* * * * * * *

[210] Q. How is it possible then for a Central Hardware employee or a Central Hardware customer to come to Central Hardware from east Thirty Eighth Street, if you don't own that road? A. We have an easement across there.

Q. Do you own the land on either side of that? A. No, sir. Well in the one spot. We don't own it. We're leasing where that one employee parking area is shown would be adjacent to the road.

* * * * * * *

Trial Examiner: Let me ask you a question while counsel is consulting his notes.

[211] How do employees of the east store generally reach that parking area?

The Witness: I would say the majority come through from Shadeland. But certainly a lot of them come in from Thirty Eighth Street as well.

* * * * * * *

[212] Can you describe to the court the general business activity that goes on over in the area that you have now marked as the Blue and White establishment? A. It's primarily a truck stop.

Q. Is it a service station sort of thing? A. Yes, sir.

* * * * * * *

[216] Q. Do you have employees that work solely in the selling areas? [217] A. Yes, sir.

Q. Do you have employees who work solely in the warehousing areas? A. Yes, sir.

Q. Do you have employees that work in both? A. Yes, sir.

Q. Do you have employees that work outside? A. Yes, sir.

Q. I presume the duties of the people in the selling area are to assist customers in their selection and to mark items for sale and generally go about the business of being salesmen;

I assume the people in the warehousing area generally go about the business of being a warehouseman.

Is that correct? A. Yes, sir.

Q. What are the duties of these outside people you have alluded to? A. Well we have porters that work outside in the lots, clean the lots.

Q. When you say the porter cleans the lot, what do you mean by that? A. Naturally on parking lots customers will do such things as changing oil, or throwing debris or leaving debris in the lots. And of necessity we have to send someone out **[218]** there to clean them up.

Q. When do you ordinarily have these people clean them up? A. Early in the morning primarily.

Q. Why is that? A. Because of the lack of customer cars on the parking lot, for ease of cleaning, and so that we can clean the entire area.

Q. Now directing your attention back to the selling area of the Central Hardware Store, would you describe to the court generally the matter of merchandising in a self service hardware store?

Now I presume that Central Hardware operates what is commonly called a self service hardware store, is that correct? A. Yes, sir.

Q. Would you describe to the court what a self service hardware store is? A. Well, we are unique in the hardware type operation in that we have checkout lanes such as might be found in grocery stores. We try to make as much merchandise available for selection by the customer, so that he may make his own selection.

Q. Do you provide carts and baskets and items of this nature? A. Yes, sir. We have shopping carts such as in grocery operations. And we also have what we call a little red basket, that they can pick up their merchandise and take to the **[219]** checkout lanes.

* * * * * * *

[234] "Q. All right. Addressing yourself only to the Indianapolis stores, the east and west stores, have you had occasion to invoke the no solicitation rule since you have been in Indianapolis? A. Yes, sir. Regarding these two stores or any other it really doesn't make any difference, primarily——")

Trial Examiner: All right. The objection to any answer beyond yes, sir, will be sustained.

By Mr. Mattern

Q. Have you had occasion to invoke the no solicitation rule once, more than once, or not at all? A. Many times.

Q. Would you describe the situations in which you invoked the no solicitation rule? A. One I can remember was it happened to be two little Girl Scouts that were going to solicit for contributions. I asked them if they had sought permission or had any letter of permission to solicit on the property and they said, "No." And I said, I was terribly sorry but I would have to ask them to leave, that if they could get or would get a letter from an adult or official from the Girl Scouts and would submit it to me it would probably be approved.

[235] I've had occasion for two little leagues that I asked to leave the parking lot.

In the store one girl I remember was selling magazines. She started around, made an attempt to go around and talk to the individual employees and I stopped her.

We've had a junior achievement had approached me and asked, there they were seeking permission but I said before I can grant permission I'd want to know the product and they would have to bring a letter from their leader or group leader stating what their product was and show it to me and then if possible we could grant permission.

There was an occasion when an employee was going to solicit a petition in regards to a young army lad from Lebanon, Indiana that was court martialed. He sought a petition to send one of the senators or one of the congressmen of the State and I denied him permission to make that solicitation.

Truthfully there are many, many others.

And my application of the no solicitation rule certainly primarily is for this type of thing.

Q. Was there also a request to sell Christmas trees on the lot this year? A. Yes, sir.

Q. Was there also a request to put in a drive in photo finish on the parking lot this year? **[236]** A. Yes, sir.

Q. Did you turn both of those down? A. Yes, sir.

* * * * * * *

[237] During this period of this organizational attempt by the Retail Clerks Union, did you have occasion to invoke this rule against anybody that you felt had been soliciting other employees who were on working time in the selling area and the person who was doing the soliciting was herself an employee who was supposed to be at her duty station?

Trial Examiner: This was for the Union?

Mr. Mattern: Who was soliciting for the Union.

The Witness: Yes, sir.

By Mr. Mattern

Q. If you can recall who that person was, say. A. That was Marilyn Ragle.

Q. Was that the only instance where the rule was invoked? A. Yes, sir, to my knowledge.

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[238] Q. What was the penalty that was invoked against Marilyn Ragle by management of Central Hardware? A. A three day layoff.

* * * * * * *

[246] Q. Now directing your attention to the time that George Reed gave his June 13 speeches in Indianapolis, I believe you testified there were four speeches given? A. Yes, sir.

Q. What was the purpose of four speeches when you only had two stores? A. Because we have employed both full-time and part-time employees. So that two was given at each store. One primarily directed to those who were in full-time employment and those who were part-time employees.

* * * * * * *

[252] A. Well, I had probably 25 to 30 employees come to me personally and I know others did too to some of the other supervisors, and complain of really the harassment——.

Trial Examiner: What did they tell you?

The Witness: They were saying they were being detained from leaving the lot, they were being threatened, that they were being slowed down when they came. Some of them even asked for protection when they left the store at night.

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[258] Q. Did any of these employees threaten to quit because of these activities you described? A. Yes, sir, I believe there was.

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[260] Q. At the same time I believe you said a second ago that Mr. Reed also called you. Could you give us the gist of that conversation? A. Yes. He called me and said that because of my conversation and my mentioning of the problem of complaining, employees complaining, that I was to keep the organizers out of the store, off the lot. And this is what it was.

Q. Did he tell you to keep all organizers or did he say the harassing ones? A. The harassing organizers.

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[262] Q. Do you have any knowledge as to why he was terminated? A. He was terminated because he falsified his employment application.

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[263] Q. Are there any other people that you did treat exactly in the same way? And if so, describe him. A. Joe Matkovik is one.

Q. Who is Joe Matkovik? He has been mentioned several times in this hearing. A. He is currently a prime suspect in our large robbery that we had there, armed robbery.

Prior to that time he had been a suspicious character for shoplifting.

Q. Had you ever caught him shoplifting? A. Yes, sir.

* * * * * * *

[270] Q. Any others besides those that were former employees discharged for stealing or any other cause? A. Yes, sir. There's another one over at the, ex-employee over at the east store. I do not know the name.

There's a sex deviate that we keep off the lot on sight.

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Q. All right. Are there any shoplifters? A. Yes, sir. There are shoplifters. In fact, there was one prosecuted yesterday.

Mr. Karmel: Sir, if it will help any, the Union will stipulate——

Trial Examiner: Concede is the word.

Mr. Karmel: ——concede the Company excludes shoplifters from its premises.

* * * * * * *

[273] Q. About a month ago at my direction did you secure a list of your employees and get the exact distances from their homes to their respective place of employment? A. Yes, sir.

Q. Are they both full-time and part-time or just full-time employees? A. These are just full-time.

Q. At my direction did you categorize these people into a group living 5 miles or less from the store, between 5 miles and 10 miles or less from the store, between 10 miles and 15 miles or less from the store and over 15 miles from the store? A. Yes, sir, I did.

Q. Did you reduce these into percentages? A. Yes, sir.

[274] Q. Would you tell us what the percentage of your employees who are full-time, what the percentage is of those who live 5 miles or less from that store? A. Yes. This includes full-time employees in both east and west stores, 5 miles or less, there's 57 per cent live 5 miles or less.

Q. Counting those same employees, the ones who live between 5 miles and 10 miles, what percentage of your employees live within 10 miles of your store? A. A total of 74 per cent.

Trial Examiner: Less than 10 miles?

The Witness: Ten miles or less, 74 per cent.

By Mr. Mattern

Q. Do you have it calculated for 8 miles or less? A. Yes, sir, 68 per cent.

Q. How many employees live over 15 miles away; what per cent? A. Twelve per cent.

Q. What per cent live between 10 miles and 15 miles away? A. It would be 14 per cent.

Q. Thank you. A. Actually 15 and under would be 88 per cent.

Trial Examiner: During what period were these employees working?

Mr. Mattern: Do you remember the date that you [275] established that list?

The Witness: Now this list was of course mid-June.

Trial Examiner: No, no. This list which you just gave, where these employees live.

The Witness: About a week ago. Within the last week in fact.

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[283] Redirect Examination

By Mr. Karmel

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[290] The Witness: They also, there was mention made that their dues could be increased, they might lose their job, the initiation fee would be increased. These were many things, just a few of the things that the people were telling me about.

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[291] Q. Did you ever hear any Union representative, sir, threaten any employee with loss of employment if they did not belong to the Union? Did you ever hear? A. I didn't hear it myself. I heard it from the employee.

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[292] Q. Did you ever yourself, sir, see any Union representative physically detain any employee from leaving his or her vehicle? A. Yes, sir.

Q. When was this, sir? A. Back during their campaign.

Q. Who was this? A. Many of them I did not know.

Trial Examiner: Many of the employees you did not know?

The Witness: No, these weren't employees. These were non-employees.

Mr. Mattern: Doing what?

Trial Examiner: Do you mean non-employees who were keeping employees from leaving their cars, is that what you are saying?

The Witness: That's correct.

Trial Examiner: But you knew the employees?

The Witness: Yes.

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[293] Q. Give me the name of one of the girls. We will start with ~~the one girl.~~ A. Theresa DeLong.

Q. Theresa DeLong. Now what did you specifically observe with Theresa DeLong? A. That there were non-employees standing on both sides of the car, on the outside, and she was in, talking with her. Not only did I see it but then she even came in and complained about it.

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[303] Now, was it also your understanding of the instruction given to you by Mr. Reed that organizers who had not engaged in harassing tactics, as you have deemed them to be, would be allowed to be on the parking lot?

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The Witness: There was no inference one way or the other.

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[307] Now I will permit you to ask this witness what Theresa DeLong told him. If that is what you want to know.

Mr. Mattern: Yes. When you observed her out there with [308] what you assumed to be a Union organizer on each side of the car and she came in and complained about harassment, what did she tell you?

The Witness: Well she told me there was two guys out there and that she was wanting to come in, leave the car. But one guy was standing on each side of the car right at the doors detaining her from coming in and she was not interested in joining the Union and essentially told them so, but they persisted or stayed right there at the car and essentially stopped her from getting out of the car as she had desired.

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[310] **RAYMOND SPEARS,**
a witness called by and on behalf of General Counsel, being [311] first duly sworn, was examined and testified as follows:

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Direct Examination

By Mr. Fogerty

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[312] Q. When did you come to be employed at the east side store? A. The latter part of May, 1968.

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Mr. Fogerty: Directing your attention to the period of [313] time in which you were employed at the east store, did you have occasion to be asked by a fellow employee to sign any kind of a paper?

The Witness: Yes.

By Mr. Fogerty

Q. Do you recall about when that was? A. It was in the month of June, to the best of my knowledge it was.

Q. Do you recall about how long it was after you were transferred over to the east store? A. It was about three to four weeks.

Q. Do you recall who this fellow employee was that asked you to sign this paper? A. It was a she.

Q. Do you recall what the lady's name was? A. Rebecca Eldridge or Aldridge.

Q. Do you know what her position was with the Company? A. She was a cashier.

Q. Where were you when she asked you to sign this paper? A. It was at the home modernization desk.

Q. Is that located in the store? A. Yes.

Q. Is that what would be termed the selling area? A. Yes.

Q. The part where customers can be in? **[314]** A. Yes.

Q. Was there anyone else at the home modernization desk when she asked you to sign this? A. Yes. There was Rick Copenhaver and a man by the name of Klaper. I don't recall his first name.

Q. Did you sign the paper she asked you to sign? A. Yes.

Q. Would you remember it if you saw it again? A. Yes, I would.

Mr. Fogerty: Mark this General Counsel 8.

(The document was marked General Counsel's Exhibit No. 8 for identification.)

By Mr. Fogerty

Q: I show you what has been marked as General Counsel Exhibit 8 and ask you if you can identify that? A. Yes, I can.

Q. What is that? A. Well, it was, they called it a petition.

Mr. Mattern: Objection.

Trial Examiner: Is that the paper you signed?

The Witness: This one is.

By Mr. Fogerty

Q. Is that the paper the young lady asked you to sign? A. Right.

Q. Did you sign it? [315] A. Yes.

Q. Do you find your signature on it? A. Yes.

Q. Would you point it out?

Mr. Fogerty: Let the record show the witness is pointing to the signature Raymond located in the right hand column, on the front of the page, and it is the fourth signature down.

By Mr. Fogerty

Q. Now where were you again when you signed this? A. Home modernization desk.

Q. Were you working at the time? A. Yes.

Q. Were you being paid at the time? A. Yes.

Q. You testified that there were some other people there. I believe you said a Mr. Copenhaver? A. Copenhaver.

Q. And a Mr. Klaper? A. Right.

Q. Were they on their own time or were they on Company time at that time? A. They were on Company time.

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[318] The document will be received as General Counsel Exhibit 8.

(The document heretofore marked General Counsel's Exhibit No. 8 for identification was received.)

By Mr. Fogerty

Q. Mr. Spears, was anyone else present when you signed that paper what has been introduced as General Counsel Exhibit 8 besides the people you have heretofore testified to? A. Yes.

Q. Who was that individual? A. Ted Kaptain.

Q. When did Mr. Kaptain arrive at that desk? A. Oh, just a few minutes after she arrived.

Q. Had you yet signed General Counsel Exhibit 8 at that point? A. No.

[319] Q. Was he present while you signed it? A. Yes.

Q. How far away from you was Mr. Kaptain, as best as you can recall, from you when you signed it? A. Oh, not over three feet.

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[320] Q. Well did you say anything about General Counsel Exhibit 8?

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The Witness: Yes. I asked the question what it was for.

Trial Examiner: You asked who?

The Witness: I asked the girl, Rebecca Aldridge, what the paper was for.

Mr. Fogerty: What did she reply, if anything?

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[321] A. She said that she had been harassed outside the building by the Union organizers and that this paper was to keep them from doing this any further, and Mr. Kaptain stated that a person had a right——

Trial Examiner: Was Kaptain there while you were talking to this Aldridge?

The Witness: Yes.

Trial Examiner: All right.

The Witness: He stated that a person had the right to defend themselves. That was the extent of the conversation.

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[328] **LARRY STUCK,**

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

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Direct Examination

By Mr. Fogerty

Q. Mr. Stuck, are you employed? A. Yes.

Q. Where are you employed? A. Central Hardware.

Q. Which store? A. At the west store.

Q. About when did you start there? A. The last of June.

Q. What year? A. 1968.

Q. In what capacity are you employed? A. I was hired as a salesman.

Q. What department? A. Paint and lumber.

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[329] Q. Are you acquainted with Marilyn Ragle? A. Yes, sir, I am.

Q. Do you know where she is employed? A. Yes, I do.

Q. Where? A. She is employed at the west store of Central Hardware.

Q. When you started to work at the Central Hardware Store, did you notice any signs posted in the store? A. Yes, I did.

Q. Where were these signs posted?

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A. It was posted on a bulletin board like panel surrounding the time clock.

Q. Do you recall any sign posted there with regard to **[330]** solicitation? A. Yes.

Q. Do you recall what that sign read? A. It was a letter on a Central Hardware letterhead posting general rules of store policy and a no solicitation rule was one of them.

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Q. Would you give it to us? A. It stated that there would be no solicitation on store property or in the store without the approval of the manager.

Q. When did you notice that sign? A. That was shortly, a day or two after I started to work there.

Q. Is that sign still there? A. I really couldn't say.

Q. Directing your attention to about a week or a week and a half after you began employment at the Central Hardware west store, did you have occasion to speak with a supervisor with relation to a union card? A. Yes, I did.

[331] Q. Do you know the supervisor's name? A. I spoke to two supervisors on one particular occasion regarding a Union card.

Q. Did you speak with them at the same time? A. Within the same day, a matter of an hour and a half of each other.

Q. Directing your attention to the first of these two supervisors you spoke to, do you recall this gentleman's name? A. No, I don't. I was a new employee. I was not familiar with everyone at the store at that time. This particular supervisor was a part-time supervisor.

Q. Is that particular supervisor still there? A. No, sir.

Q. Do you know his name now? A. No, sir.

Q. Directing your attention to the second conversation you said with a supervisor, who was that supervisor? A. Mr. Bernstein.

Q. Where did this conversation take place with Mr. Bernstein? A. In the front of the store.

Q. Was anyone else present besides yourself and Mr. Bernstein? A. Not that I recall.

Q. Would you tell us what the conversation was between you [332] and Mr. Bernstein? A. Yes. We or I had been advised by this part-time supervisor who saw me looking over an authorization card to see Mr. Bernstein regarding where I had gotten the card and from whom. And Mr. Bernstein asked me who and when I received the card.

Trial Examiner: Who? Do you mean from whom?

The Witness: From whom I had received it and when.

By Mr. Fogerty

Q. What, if anything, did you answer to this question? A. I told him that I had received it from Marilyn Ragle that evening and it was around 6:00 o'clock when I had got the card.

Q. That you received the card? A. Yes.

Trial Examiner: What time was this conversation?

The Witness: This was about 30 minutes later.

Mr. Mattern: Would that make it 7:00 o'clock?

The Witness: Six thirty.

By Mr. Fogerty

Q. Was there anything else said in this conversation between you and Mr. Bernstein? A. He said, "Thank you", and he would talk to me later about that.

Q. Did you have the card in your possession at the time [333] you talked with Mr. Bernstein? A. Yes, I did.

Q. What, if anything, happened to the card? A. I had signed Marilyn's name, written her name on the back of the card. He'd asked me to do that.

Q. Who asked you to do that? A. Mr. Bernstein had asked me to do that. Then he asked if he could have it and I gave it to him.

Q. That card which you gave to Mr. Bernstein had you filled it out or was it blank? A. It was blank.

Q. Directing your attention to approximately a week after this conversation with Mr. Bernstein, did you have occasion to talk with Mr. Reed of the Company? A. Yes, I did.

Q. Was this the same Mr. Reed who is sitting at counsel's table, to my left? A. Yes, it is.

Q. Where did this conversation take place? A. It took place in Mr. Hagerman's office.

Q. Was anyone else present with you at that time? A. Mr. Hagerman was present.

Q. Do you recall the approximate date of that conversation? A. I believe it was somewhere around the fifteenth or sixteenth of July.

[334] Q. You say you believe it was the fifteenth? A. Yes. I'm not too sure about that date.

Q. Tell us what the conversation was between you and Mr. Reed. A. Mr. Reed had came up from St. Louis on one of his business trips and he had been approached about me turning the card in to one of the supervisors——

Q. If I could stop you for just a moment, Mr. Stuck. I don't want to interrupt you but I am just interested in the conversation between you and Mr. Reed. A. He had asked me about the card, who I had got it from and asked me to explain where and when it was given to me. And I did this.

Q. Did you tell him the answers to these questions? A. Yes, I did. He then stated——

Trial Examiner: What did you tell him?

The Witness: I told him I had been given the card while I was working in the stock area, no, it was the warehouse.

Trial Examiner: Did you tell him who gave you the card?

The Witness: And I told him Marilyn Ragle had given me the card. And he then stated——

By Mr. Fogerty

Q. By "he" you are referring to who? A. Mr. Reed. He told me he had talked to Mrs. Ragle regarding this and that our stories did not match up and he would **[335]** like to find out what the truth was behind this.

Q. What, if anything, did you say to this? A. Well I said I had told the truth and that whatever she had said concerning that I would like to hear it. And he went on to explain what she had told him.

Trial Examiner: What did he say she had told him?

The Witness: Mrs. Ragle had told him she had given me the Union card at my mother-in-law's house to which she is a friend of in my mother-in-law's house.

And I stated I had not been to my mother-in-law's house for quite a period of time and that this was not true, that she gave me the card in the store while I was working.

By Mr. Fogerty

Q. Was Mr. Hagerman present throughout this whole conversation? A. The first part, yes. And then he left the office to attend to some business and he came back, it was just a matter of a few minutes.

Q. Did you sign any kind of a statement while you were in the office at that time? A. Yes, I did.

Q. Would you tell us what this statement was? A. It was to the effect that I had received the card while I was working in the store from Marilyn Ragle.

Q. Now directing your attention to some time after this **[336]** meeting which you have just described with Mr. Reed, Mr. Hagerman in Mr. Hagerman's office, did you have occasion to meet with Mr. Reed, Mr. Hagerman again in the office? A. Yes.

Q. Would you tell us about when—strike that. Would you tell us how long this meeting was from the first meeting held? A. It would, oh, I would say a week to two weeks after the first meeting. I'm not too sure about that.

Q. Who else was present when you had this meeting, if anybody? Who else, if anybody, was present when you had this meeting again with Mr. Reed and Mr. Hagerman? A. No one besides myself and Mr. Reed and Mr. Hagerman were present at that time.

Q. Did you have a conversation with Mr. Reed at that time? A. Yes.

Q. Would you tell us what that conversation was? A. Well he had stated that they had taken disciplinary action against Mrs. Ragle for soliciting in the store without their permission on Company time, referring to me as I was working.

Q. Did you have occasion to be present at a meeting in Mr. Hagerman's office with Mr. Reed and Mr. Hagerman at which meeting Marilyn Ragle attended? A. Yes, I did.

[337] Q. How long was that meeting after your first meeting with Mr. Reed? A. That was the first meeting. It occurred during the first meeting.

Q. During the first meeting? A. Yes.

Trial Examiner: Do you mean Mrs. Ragle was called into the first meeting?

The Witness: Yes.

By Mr. Fogerty

Q. So we are back to the first meeting you had with Mr. Reed? A. Yes.

Q. But if I understand your testimony correctly Mrs. Ragle was not there the whole time? A. No.

Q. Did Mrs. Ragle have a conversation in your presence with Mr. Reed? A. Yes.

Q. Do you recall what that conversation was? A. Yes.

Q. Would you tell us what that conversation was that Mrs. Ragle had with Mr. Reed in your presence? A. Yes. Mr. Reed opened up by saying that he had heard my side of the story and that my side did not match up with **[338]** the side she had given and that he was going to find out who was telling the truth and who wasn't and he did so by calling my mother-in-law to verify the story about her saying that she'd given me the card at my mother-in-law's house——

Trial Examiner: Called right then and there or at some other time?

Did he call while you were there?

The Witness: No. He called before and he——

Trial Examiner: He told Mrs. Ragle he had already spoken to your mother-in-law?

The Witness: Yes.

By Mr. Fogerty

Q. Had you finished your answer? A. No.

Q. Go ahead. A. Then Mrs. Ragle made a few remarks of her own.

Trial Examiner: What did she say?

The Witness: She stated that no matter what I said——

Trial Examiner: No matter what you, Stuck, said?

The Witness: I said. Yes—my purpose in doing this was to benefit myself and that I would do anything to accomplish this no matter who was concerned or who got in the way.

By Mr. Fogerty

Q. Did Mr. Reed ask Mrs. Ragle any questions about the card in your presence? **[339]** A. Yes, he did.

Q. Would you tell us what those questions were? As best you can recall. A. Yes. He then told Mrs. Ragle that he had talked to my mother-in-law and that she had verified my story. And he then asked her again where she gave me the card. She then replied that she did not give me the card at my mother-in-law's house but outside the house. He replied that he didn't consider that a satisfactory answer and he wanted her to be sure of what she said. And she then said she gave it to me on the parking lot at the store.

And at this point I was asked to leave the office so he could talk to her alone for a few minutes.

Q. Now you testified a moment ago that Mr. Reed or Mr. Hagerman told you that Marilyn Ragle had been given a three day suspension? A. Yes.

Q. Was that after or before your conversation with Mr. Reed or Mr. Hagerman and Mrs. Ragle? A. That was afterwards.

Q. Mr. Stuck, as far as you know, what is the Company policy with respect to whether employees can leave the premises on their lunch times or break times? A. It's perfectly all right as far as I know. I've done it myself.

[340] Q. As far as you know, is it all right for employees to, weather permitting, eat their lunch out on the parking lot in their car, if they so desire? A. If they so desire.

Q. Do you know any employees that do that? A. I've had an occasion to know people have done it from time to time, yes.

Q. But as far as you know, there is no policy against it? A. As far as I know.

Q. Is that right? A. That's right.

* * * * * * *

[352] **MARILYN RAGLE,**

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

* * * * * * *

Direct Examination

By Mr. Fogerty

[353] Q. Are you employed, Mrs. Ragle? A. Yes, I am.

Q. Where are you employed? A. Central Hardware.

Q. Which store are you employed at? A. The west store.

Q. What is your job there at the west store? A. Cashier.

Q. About how long have you been working at the Central Hardware west store? A. A little over 9 months.

Q. Did you have occasion to sign a Union authorization card? A. Yes, I did.

Q. Do you recall about when you signed the card? A. It was sometime in May.

* * * * * * *

[355] Q. Directing your attention to on or about June 13, 1968, do you recall attending a meeting at the Company at which time a Mr. Reed spoke? A. Yes.

Q. Do you recall about what time of the day this was? A. It was between 8:00, 8:30.

Q. In the morning or evening? A. In the morning.

Q. Where was this meeting held? A. In the tinker torium.

Trial Examiner: Where?

The Witness: Tinker torium.

Trial Examiner: Would you be more explicit, Miss Ragle, please?

The Witness: It's a regular meeting room.

Trial Examiner: In the store?

The Witness: Yes.

By Mr. Fogerty

Q. By whom was this meeting attended, if you know? A. It was, everybody that was scheduled full-time that day.

* * * * * * *

[356] Q. Would you tell us what you recall that Mr. Reed said during this meeting? A. He welcomed us all to Central Hardware. And he said he had a speech that he had written out and if we would excuse him he would like to read it. So he proceeded to read it and he would stop maybe a paragraph or two and go off the record and then he'd start reading again.

Trial Examiner: Just a moment. Did he say he was going off the record?

* * * * * * *

[357] You may continue, Mrs. Ragle.

The Witness: He said that he had heard there had been pressure put on people by the Union, there was some force to sign authorization cards, and he said he would not permit that in the store or on the parking lot, and I don't remember exactly what happened after that. But he did have a TOPS contract that he recited from. He compared their insurance policies with the insurance policies we had, the hourly wages that TOPS had compared to what we had.

He said there wasn't anyone in the store that didn't start over a dollar seventy cents which the Union had got for TOPS after 18 months. And he said, "Correct me, Bonnie, if I'm wrong." Bonnie is the office girl. And she agreed with him.

By Mr. Fogerty

Q. Do you recall anything else that Mr. Reed said during this meeting? [358] A. He said that if anyone had any Union material, literature that had been passed around, cards, that he would appreciate having them, to feel free to come to the office and talk to him if they had any doubts about the Union.

Q. Do you recall anything else Mr. Reed said? A. No.

Q. Do you recall if there was a question and answer period during this meeting? A. There was not that I can remember.

Q. Do you recall anything else that Mr. Reed said? A. Well, I did leave out something.

When he was talking about the force and the pressure that was put on people he did say the store had a non-solicitation rule and that they enforced this, that he belonged to the Knights of Columbus and they sold raffle tickets which they would not let him sell in the store and he figured the Union wasn't any better than his raffle tickets.

Q. Directing your attention to on or about July the sixth, 1968, did you have occasion to be in Mr. Hagerman's office? A. Yes.

Q. How did you come to be in Mr. Hagerman's office? A. I was on the cash register at the checkout lanes and Mr. Hagerman came down——

Trial Examiner: When?

Mr. Fogerty: On or about July 6.

[359] The Witness: He came down and closed me off and said he would like to talk to me in his office.

By Mr. Fogerty

Q. Did you go to his office? A. Yes.

Q. Was anybody else in the office? A. Mr. Reed was there.

Q. Was there anyone else beside Mr. Reed, Mr. Hagerman and yourself? A. No.

Q. Did you have a conversation with either Mr. Reed or Mr. Hagerman? A. I did with Mr. Reed.

Q. Would you tell us what that conversation was between you and Mr. Reed? A. Well, first of all, he asked me how I liked my job and working at Central Hardware. I told him I like my job. I enjoyed it.

And then he had this authorization card that he had in front of him and, you know, he showed it to me, but I didn't see it up close. He asked me if I had given this to an employee, Larry Stuck.

* * * * * * *

[363] Q. Mrs. Ragle, did Mr. Reed say anything to you with respect to that card he showed you? A. Yes. He asked me——

Q. What did he say? A. He asked me if I gave it to Larry in the store and I told him "No". And he says, "Well, Larry says you did." And I said, "Well, I can't help what Larry said." So he said, "Being as your stories don't gibe," he said, "I'm going to have to confront you with Larry," and he said, "If I can't get to the bottom of it," he said, "I'll fire both of you." **[364]** So Larry was off that day——

Q. Now——

Trial Examiner: Let the witness finish.

Mr. Fogerty: Go ahead.

The Witness: Larry was off that day but he was scheduled to be back on Monday. And I was off on Monday. So I agreed to come in on my day off and be confronted with him. And that was all that happened that day that I can remember.

By Mr. Fogerty

Q. Directing your atention to the following Monday, did you in fact——

Trial Examiner: What date would that be?

Mr. Fogerty: That would be the eighth of July.—did you have occasion to go into the store?

The Witness: Yes.

By Mr. Fogerty

Q. What happened then? A. Well, I went into the lunch room and Mr. Hagerman came down after me and I went upstairs.

Q. About what time was this? A. I would say about 1:00 o'clock. It was after 1:00 o'clock when he came after me.

Q. Did you say Mr. Hagerman came down and got you? A. (Nods head to signify affirmative.)

[365] Q. Where did you go then? A. Upstairs to the office.

Q. Who was there? A. Mr. Hagerman and Mr. Reed and Larry.

Q. Did you have occasion at that time to have a conversation with respect to the card? A. Well when I got up there the door was shut and I waited. That's how I knew Larry was in there. When they opened the door I saw him. But I had to wait a while after going upstairs.

Q. After you waited a while then did you go in? A. Yes.

Q. Once you got in then, did you have occasion to have a conversation about the card? A. Yes.

Q. Who talked to you about the card? A. Mr. Reed.

Q. Would you tell us what that conversation was between you and Mr. Reed? A. Well, first he had Larry tell his story and then he asked——

Q. What was that story? A. That I had gave him the card in the store.

Q. Then what happened? A. Well, he asked me if that was right. And I told him, "No." Well, then, he informed me that he had called Larry's **[366]** mother-in-law and she said she didn't know anything about it.

Trial Examiner: Let me ask you this. Was there some previous conversation about Larry's mother-in-law?

The Witness: Well, yes, this was on a Saturday, the first day I went up there.

Trial Examiner: What was said about the mother-in-law?

The Witness: I told him I gave the card at Larry's mother-in-law.

Trial Examiner: Now the second time on July eighth, Mr. Reed said he had called Larry's mother-in-law? What did he tell you about his conversation with Larry's mother-in-law? I think that is what counsel wants.

The Witness: Well the best I can remember he said she didn't know anything about it.

By Mr. Fogerty

Q. Was there anything else to this conversation between you and Mr. Reed? A. Well, he asked Larry to leave after we had told our stories, and he led me to believe that he thought I was lying.

Mr. Mattern: Objection.

Trial Examiner: Sustained. We will strike that from the record the matter of what he led her to believe.

Mr. Fogerty: Would you just tell us what Mr. Reed said to you and what you said to Mr. Reed, if anything.

The Witness: Well I can't remember the exact words. **[367]** But he said——

Trial Examiner: Tell us the substance.

The Witness: He said now, something to this effect. "Marilyn," he said, "I know that you didn't give it to

Larry at his mother-in-law's." And he asked me again if I wanted to tell him where I did give it to him at. And I told him, "No". So he had this form filled out for a three day suspension for violation of the non-solicitation rule, and he said he didn't want to fire me because I was a good worker but he had to go along with Company policy and give me a disciplinary action of three days.

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Q. I show you what has been marked as General Counsel Exhibit 10 and ask if you can identify that? A. Yes. That's the copy that he gave me that I signed.

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[369] Trial Examiner: I will overrule your objection. The document will be received.

(The document heretofore marked General Counsel's Exhibit No. 10 for identification was received.)

Mr. Fogerty: Thank you.

During the meeting that you signed this form, do you recall anything else in the conversation you had with Mr. Reed that you have not told us yet?

The Witness: Yes. He said he had been informed that I had talked to Union officials representatives on the parking lot and I told him, "Yes, I had." "I was on my own time, my lunch hour."

He said that there wasn't to be any discussions of Union activities or matters in the store at any time.

And I said, "Do you mean when I'm on my lunch hour or my break I can't talk about Union matters?" And he said, "No, not in the store."

By Mr. Fogerty

Q. During that same meeting at which time you signed General Counsel Exhibit 10, did Mr. Reed show you any other papers? **[370]** A. Yes.

* * * * * * * *

Q. I show you what has been received in evidence as General Counsel Exhibit 8 and ask you if you can identify that? A. Yes. It's the same paper that he flashed in front of me.

* * * * * * *

[371] Going back to the exhibit I have shown you, General Counsel Exhibit 8, which you have in front of you, did Mr. Reed say anything to you with respect to that General Counsel Exhibit 8?

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[372] Q. What did Mr. Reed say? A. He said "this is a petition that has been distributed at the east store signed by employees that do not want the Union and that have been harassed by the Union representatives." And now he said, "Now, Marilyn, you know all these people can't be wrong."

* * * * * * *

[374] Q. Directing your attention to the month of October, did you have occasion to be wearing anything unusual on your work clothes? A. Yes.

Q. Would you tell us what that was you were wearing on your work clothes? A. During the month of October I had a button that said, "I am a registered voter. Are you?" And at the bottom it said, "R. C. I. A."

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[375] Q. Mrs. Ragle, did you have occasion to have a conversation with a supervisor with regard to that button? A. Yes.

Q. Would you tell us about when that conversation was? A. Well, it was around lunch time because I was working on the service desk as a relief for the girl when she went to lunch——

Q. Are you finished? A. (Nods head to indicate affirmative.)

Q. Would you tell us about when in terms of date that that conversation was? A. I don't have any idea. I know it was in October.

Q. Of what year? A. Sixty-eight.

Q. Would you tell us who the supervisor was you had the conversation with? A. Mr. Cuvier.

Q. Do you know what his first name is? A. Rene.

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[376] Trial Examiner: I may refer to that man as the name which appears in the complaint?

Mr. Mattern: Yes, sir.

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Q. Would you tell us where this conversation took place? A. At the service desk.

Q. Were you on Company time or were you off Company time? A. I was on Company time.

Q. Was there anyone else present, if you know? A. Yes.

Q. Would you tell us who? A. Mary Dawson.

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[377] Q. Would you tell us what the conversation was that you had with Mr. Caverlier? A. Well, I noticed him looking at my smock and I had really forgot at the moment that I had the button on. So when I looked down I knew what he was looking at, and he said, "What's that say?" and he read it and he said, "I reckon you'd like to have the Union in here." I said, "Yes, I would." He said, "They'll never make it." And I said, "Why?" And he said, "Just won't." He said, "Do they have a dental plant here?" And I said, "No,——

Trial Examiner: What?

The Witness: Dental plant here. And I said, "No, not to my knowledge." And he said, "Boy, they got a good one in California." He said, "I belonged to Retail Clerks in California."

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[382] **Direct Examination**

By Mr. Karmel

Q. Is there a room in the store where the employees eat their lunch or have coffee breaks? A. Yes, we have a lunch room.

Q. Where is that room located? A. Well, it's on the east side of the store towards the [383] front, front of the store on the east side of the wall.

Q. Is it off the selling floor? A. Yes.

Q. And it is used exclusively by employees? It is not a customer restaurant, is it? A. Customers don't go in there and eat but they go in there and buy candy bars, cigarettes.

Q. But the employees can and do have their lunch in this area? A. Yes.

Q. And coffee breaks? A. Yes.

Q. Are there any facilities in the rear of the store for employees to check their clothing or lockers, for example, do you have such facilities? A. Yes.

Q. Where are those facilities located? A. They're in the warehouse area.

Q. That is in the rear of the store, the warehouse area? A. Yes.

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[392] **Cross-Examination**

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By Mr. Mattern

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[394] Q. Mrs. Ragle, it has been established you testified to this, I don't believe there is any question in anybody's

mind, you gave Larry Stuck what has been referred to as a Union authorization card that you had signed? A. Yes.

Q. Now exactly where were you and where was he? A. We were both in the stock area.

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Q. Stock area of what? A. I think it's the paint.

Q. Paint department? A. Yes.

Q. At the Central Hardware west store? A. Yes.

Q. Were you supposed to be working? A. No. I was on my way home.

Q. Was Larry Stuck working? **[395]** A. I don't really know. He was standing there in the stock room, whether he had clocked out I don't know because that was at the time when the clock was in the stock room.

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[404] The Witness: I received a check from them.

By Mr. Mattern

Q. How much was the check? A. Forty some dollars. I don't remember exactly.

Q. When did you receive that check? A. The next week after I was suspended.

Q. Did they tell you what that check was for? A. Organizing expense and to help for the three days that I was off without pay.

Q. Did you say organizing expense? A. (Nods head to signify affirmative.)

Q. What do you mean by that? A. I was organizing in the store and on my own time.

Q. You were organizing in the store. A. I was talking organization to the employees.

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[408] Q. Mrs. Ragle, you said that you were out making home calls. How many people did you call on? A. That's hard to determine.

Q. Did you call on as many as 10? A. No, I don't believe I did. No.

Q. Well, if it was less than 10 it should be very easy for you to determine. If it is a number between 1 and 10 that is not that tough. A. I would say 5.

Q. Were you operating from a list? A. Yes.

Q. Did this list have names and addresses on it? A. Yes.

[409] Q. Did it have job titles on it? A. No.

Q. Did it have telephone numbers? A. No.

Q. Where did you get the list? A. I made it up myself.

Q. Where did you get the information? A. I asked the people.

Q. Did you ever call Ed Stahl and tell him about people that have now come to work and give him names and addresses? A. Yes.

* * * * * * *

[440] Mr. Karmel: * * * But beyond that, sir, I want to make it absolutely clear the Union certainly does not suggest for one moment that the management of the store does not have a right to be on the lookout for suspicious characters and that indeed the employees should be so instructed to be on the alert for suspicious characters.

I am not even suggesting, sir, that everyone in the United States of America has the absolute right to walk around that store, look around, without making purchases——

Trial Examiner: You are not suggesting?

Mr. Karmel: I am not suggesting that management has to sit by and just to allow this to occur without taking some steps to protect its interests.

Mr. Mattern: I will stipulate.

Mr. Karmel: And if you want I will stipulate to it.

Mr. Mattern: Accepted.

[441] Trial Examiner: I will accept that stipulation.

Mr. Karmel: Fine. Fine. We should have our case clear.

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Mr. Fogerty: As I understand the stipulation it is the Respondent does have the right, does not have the duty to sit by and watch anybody in the United States go into their store at any time while the store is open and just simply walk around. Right.

Mr. Karmel: They can——

Mr. Fogerty: If that is the stipulation I will enter into it.

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[468] **EDWARD G. STAHL, JR.,**

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

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Direct Examination

By Mr. Fogerty

Q. Are you employed, Mr. Stahl? A. Yes, I am.

Q. By whom are you employed? A. The Retail Clerks International Association, AFL-CIO.

Trial Examiner: In what capacity?

The Witness: As a Union organizer.

By Mr. Fogerty

Q. Directing your attention to on or about July twenty second, **[469]** 1968, did you have occasion to be at the Central Hardware, west store, Indianapolis? A. Yes, I did.

Q. Would you tell us about when you were there on that day? A. It was right around 5:00 or 6:00 o'clock in the evening, approximate.

* * * * * * *

[471] Trial Examiner: Sustained. Just tell us what was said, Mr. Stahl.

The Witness: He said, "Ed," he said, as far as I can recall, he said, "We don't want your business in this store and I prefer you to leave or I'll call the police."

Then Mark, an associate, a friend of mine that was working with me said, "Ed, you stay in your car and I'm going to look at some sporting goods equipment as a customer." So from that time on——

By Mr. Fogerty

Q. Go ahead. A. That's all of that, sir.

* * * * * * *

Q. Would you tell us what happened at that point? A. Well, at that point I got in my car, started the car and went over to McDonald's to get a coke.

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[475] Q. Where were you when you observed Mr. Kapetanakis and the policeman come out of the store? A. I was over on the Fashion Fair lot at that particular time. I had moved from McDonald's and then went over to Fashion Fair to get a closer look to see what was going on off **[476]** the Central Hardware property so-called.

Q. Tell us when did you move from the McDonald lot to the Fashion Square area? A. When the police car arrived at the scene.

Q. Would you tell us how far away you were at that point from the entrance to the store approximately? A. I would say about in the neighborhood of between about 80, 100 yards.

Q. Did you observe any other activity after Mr. Kapetanakis and the policeman came out of the store? A. Yes. Another police car arrived at the scene.

Q. Was this an unmarked or a marked police car? A. It was of the same category as the first car.

Q. What was it? A. It was the same marking.

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[480] Q. Approximately how many people did you observe in the immediate vicinity of where Mark and the policemen were? A. I would say in the neighborhood of 15 to 20.

Q. Tell us, where were these police cars parked, you testified there was one and then there was a second police car, where did these police cars park? A. They parked right in front of the front doors of Central Hardware Company.

Q. Both of the police cars? A. Right. In fact, the paddy wagon, too.

Q. Now, these people you said you observed, were they inside or outside the store? A. Could you repeat that, please?

Q. These people you said you observed, were they inside or outside the store? A. Some of both.

Q. Would you tell us approximately how many people you observed outside of the store? A. I would say, just an estimate, I would say around 10, maybe 12.

Q. Would you tell us approximately how many people you observed inside of the store at this time? [481] A. About five. Maybe more.

Q. Now, referring to these people you testified you saw inside the store, as far as you could observe where were these people inside of the store? A. Standing right by the window, looking out from the window.

Q. Which window are you referring to? A. The front of the store window. They've got the front of the store is just practically all window.

Q. Could you tell whether the people that were looking out of the front window were customers or employees? A. Employees.

Q. How could you tell this? A. By their orange jackets. Very distinctive.

Q. Referring to the people outside of the store, could you tell whether these people were customers or employees? A. Mostly customers.

Q. You say mostly customers. Were there any employees out there that you could observe? A. Yes.

Q. How could you tell that these were employees? A. Well, by their attire.

Q. What was distinctive about their attire that you could tell that they were employees? A. Their orange smocks and their orange jackets.

[482] Q. As far as you could observe, were these people that you have testified that were outside of the store, the people that were inside of the store, as far as you could observe were they looking at the policeman and Mark or were they going about their own business? A. They were just looking at Mark and the policeman.

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Q. Directing your attention to on or about October the fifteenth, 1968, did you have occasion to be at the Central Hardware, east store? A. Yes, I did.

Q. Would you tell us approximately what time of day you were there? A. It was sometime in the afternoon.

* * * * * * * *

[484] Trial Examiner: Tell us what was said, please, or the subject matter.

[485] The Witness: Trying to get his name and his address so I could further contact him.

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Q. Would you tell us what happened then? A. A gentleman came up from behind me and shouted.

Q. Would you tell us what he shouted? A. He said, "You know there's no soliciting in this parking lot." Just like that. Over and above normal tone.

[486] Q. Did this gentleman identify himself in any way? A. He said he was a supervisor of some sort.

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Q. Do you mean he came up behind you and said what you have testified that he did say in regard to there is no soliciting here and what did you say to that, if anything? A. I said, "Now, look, I don't know you from Adam and I don't know whether you are a manager or what," I mean, like who are you telling me to leave this parking lot. That's [487] exactly what I said.

Q. What did he say, if anything, to that? A. That's where I can't remember if he said he was a manager or a supervisor and "I'm telling you to leave or I'll call the police."

Q. Did you say anything to that? A. I said, "Now, look, I don't know you from Adam. I don't know whether you're a supervisor or manager or whatever you are." I said, "Go call the police."

Q. What happened then? A. He abruptly turned and walked towards Central Hardware Store.

Q. Did you observe whether or not he went into the store? A. Yes. He went into the store.

* * * * * * *

Q. Tell us what you did. A. I just proceeded to leave the parking lot and went adjacent to the Central Hardware Store, to the Blue and White Grill.

Q. What has been previously identified as the Blue and White Truck Stop? A. Blue and White. It's a grill there and a truck stop all combined in one.

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[489] Q. Now while you were there on the Blue and White parking lot, would you tell us what happened that you observed? A. I observed a police car arrived at the Central Hardware Store and park right in front of the store.

Q. Was this an unmarked or marked police car? A. It was a marked car.

Q. Would you tell us what, if anything, the driver of that police car did? A. The fellow that told me to leave the parking lot or I'll call the police was standing right in front of the Central Hardware Store when the police car arrived. He got into the [490] police car and proceeded over to my car on the Blue and White property.

Q. After the police car arrived were you inside or outside your car? A. Inside the car.

Q. Would you tell us what happened after the man who got into the police car and the policeman arrived where you were parked? A. They got out of the car, the police car, both of them, and they walked over to where I was sitting in my car and I had my window down and they proceeded to talk to me.

Q. Was there anyone else present when they talked to you besides yourself, the policeman and the man who told you to get off the lot? A. No.

Q. Would you tell us what the conversation was among you three? A. The policeman said, "I got a report from this gentleman" which he called by his first name.

Trial Examiner: Do you know that name?

The Witness: I can't remember the name, sir. But I do know it's a fact he did call him by his first name.

By Mr. Fogerty

Q. Would you go ahead and tell us, was that all the policeman said, "I got a report from this man" by his first [491] name? A. That you're causing some kind of trouble over here at Central Hardware.

[494] Q. Mr. Stahl, directing your attention to on or about November fifth, 1968, did you have occasion to be——

Trial Examiner: What date?

Mr. Fogerty: November 5. Did you have occasion to be at the Central Hardware, west store?

The Witness: Did you say on or about November fifth?

Mr. Fogerty: Yes.

The Witness: Yes, I did.

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[498] A. Mr. Cuvellier and [illegible] Hagerman came out to my car and asked me why I wasn't leaving the parking lot and I said——

Q. Which one asked you this? You said two of them came out. A. Well Mr. Hagerman. And I wasn't finished.

Q. Go ahead. A. And he said, "Why aren't you leaving the parking lot?" I said, "Do you want me to leave the parking lot too?" He said the store previously. And he said, "Yes, I would like you to leave the parking lot, too, or I'll call the police."

But at that particular time I was still trying to start my car and I couldn't get it started.

* * * * * * *

[502] Q. While you were working at Central Hardware, what was the policy as far as you know or knew of where employees were allowed to go during their lunch periods

or rest periods? **[503]** A. They didn't care where you went as long as you were back there at the precise time of coming back, like one hour lunch if you left at 12:00 be back there at 1:00 o'clock. They didn't care where you went.

Q. By "they" you are referring to? A. The supervisors.

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Cross-Examination

By Mr. Mattern

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Q. I'm sorry. You just stated at one time you were an employee of Central Hardware, is that correct? A. At one time.

Q. Do you remember when you came to work for Central Hardware? A. It was in April.

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[506] Q. At the time you were working for Central Hardware were you also receiving a full time salary from the Union? A. Yes.

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[509] Q. Ed, didn't you freely walk around and talk to employees about the benefits of self organization? A. Could you express the word "freely"?

Q. You left your duty station during working time in the paint department and went into other departments and talked to people who were working, didn't you? A. Only when I was working too and they were working. While we were working.

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[512] The Witness: So I was standing there by myself against three supervisors and Mr. Reed said, "Ed," he said, "Did you quit Krogers?" And I said, I don't believe

I said yes or I took leave of absence at that particular time. But we did resolve the fact that I did take a leave of absence after this meeting took place. He said, "Since you did take a leave of absence," he said, "You more or less falsified your records. On this basis I am going to have to let you go."

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[526] Q. Without naming any names, are there any other employees who provide you with names and addresses of employees working at either the east or west store of Central Hardware?

* * * * * * *

[527] The Witness: No.

Trial Examiner: Only Mrs. Ragle?

The Witness: (Nods head to signify affirmative.)

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[554] **FRANK S. HOWARD**

a witness called by and on behalf of the General Counsel being first duly sworn, was examined, and testified as follows:

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Direct Examination

By Mr. Fogerty

Q. Mr. Howard, where are you employed? [555] A. I'm employed by the Indiana State Highway Commission as a highway engineer.

Q. In what capacity? A. As a highway engineer.

Q. All right. As part of your job duties do you have occasion to work with surveys as to traffic amounts, traffic flows on highways, under your jurisdiction? A. I work with the Division of Planning, and we have fieldmen that take the traffic counts in different counties and different cities of the state.

Q. Okay. Mr. Howard, would you explain for us briefly just how these traffic counts are taken? A. Well, we have some permanent count stations but I'm sure the ones you have reference to are what we call portable count stations.

We send a crew of maybe four men into a county, like Marion, Lake County, with twelve portable counters and a truck. And they have certain stations that they have to set these portable counters at and leave them for a 48-hour period, and picked them up, and we should have a 48-hour count at each station. And then the tape is sent in to us with a copy of the sketch of the location where the counter was tied, and then——

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[556] A. (Continued) And then we get the copies in the office and we take the counts off of the tape and put them on a sheet of paper, and usually you type the sheet, or Xerox the copies.

By Mr. Fogerty

Q. Would you describe for us basically how this portable station works; describe for us what kind of machine it is. A. We have a Streeter-Amet counter, manufactured in Grayslake, Illinois. There is a tube put across the road and the counter is tied to the sign, or some guard post, or something; the other side is nailed down, so the tube has the same amount of pressure in it, so that each axle that goes over it counts one, but the total counts—there will be two, then, for a passenger car but it only counts one on the tape, even though you hear two clicks it's only counting one on the tape.

Q. Now, this tape you refer to, where is the tape? A. In the Streeter-Amet box, our counter box, which is off to the side of the road.

* * * * * * * *

[557] Q. Mr. Howard, I'll show you what's been marked as General Counsel's Exhibit 12, and I ask you did you at my request prepare that document?

[Document handed to witness.]

A. This is a Xerox copy of a count that's in our file under Marion County.

* * * * * * *

Q. First of all, is that the type of document you have been testifying to that's prepared from these tapes? A. Yes; that's correct.

Q. What location does that document show? [558] A. It shows the count was taken on State Road 100 in Marion County, 200 feet south of 38th Street. And this shows southbound traffic only. There's a divided lane highway there, so this count is only for the southbound traffic.

Q. I see. Now, is that State Road 100 also referred to as Shadeland Avenue? A. Yes; you are correct.

Q. And where, again, was the counter located? A. It's located on State Road 100 in Marion County, 200 feet south of 38th Street, and the counter was chained to a telephone pole No. 3702 on the west side of the street.

Q. Okay. The figures that appear in the columns on——

Mr. Fogerty: Strike that.

By Mr. Fogerty

Q. First of all, there are several columns on that document, and there are figures at the tops of those columns. The first figure I see is 4-26, and the next one is 4-27, and the next one is 4-28.

What do those figures represent? A. They're the calendar days of the month in April, 1967 that these counts were taken.

Q. Okay. Now, below those figures is the notation [559] Nor., N-o-r-period. A. That means normal. The weather was normal at time. No rain, or no snow; conditions were dry on the pavement.

Q. Now, on the left-hand side of the paper I see the term "Hour", and then figures 12-1, 1-2, 203, and so on. What do those refer to? A. They refer to A. M. hours and P. M. hours in the day.

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[560] Q. But the numbers in the columns refer to the number of cars that pass over any particular hour. A. Yes.

Q. Is that your testimony? A. Yes.

Q. Okay. Now, at the bottom, or towards the bottom of the document there there's the term "Total", and there's some figures to the right of that.

Now, explain what those figures are, without going into what the figures are themselves. A. Well, the total are just the totals that are shown by adding up each of the numbers starting at 11:00 A. M.

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[569] Trial Examiner: The document will therefore be received as General Counsel's Exhibit 12 in evidence.

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Q. Mr. Howard, I show you now what has been marked for identification as General Counsel's Exhibit 13, [570] and I ask you if you can identify that document?

[Document handed to witness.]

A. Yes. This is a Xerox copy of the original that's in our file of northbound traffic at the same location.

By Mr. Fogerty

Q. Was this taken on or about the same time as General Counsel's Exhibit 12? A. The same days, starting at the same time, ending the same time. The only difference I see in this sketch and the other sketch is—this sheet and the other sheet, this has the sketch of the location of a counter.

Q. Okay. Now, referring to the sketch, is that the diagram located at the bottom of the exhibit? A. Yes, sir.

Q. The diagram shows, does it not, the Road 100 in two lanes, there's a line across that road—— A. Uh huh.

Q. ——at the very bottom—— A. Uh huh.

Q. ——of the document. A. Uh huh.

Q. What does that line show? A. That line shows how the counter was fastened to the telephone pole on one side, and to a NO PASSING ON SHOULDER sign on the other side.

[571] Q. Your answer again as to the line across the road—— A. Well, it shows that we used a counter on one side which was tied to a telephone pole, the southbound side, and the counter was tied to a NO PASSING ON SHOULDER sign on the northbound side.

Q. Were they approximately across from each other? A. Across from each—according to this they were exactly the same, 200 feet from 28th Street.

Q. Okay. Now, the numbers appearing on this as to the particular hours involved, do they, as in General Counsel's Exhibit 12, show the amount of cars passing over this counting mechanism? A. In number.

Q. For particular periods? A. The numbers of cars during critical periods, yes, sir.

Q. Is this representative of the latest survey which your department has——

Mr. Mattern: Objection.

By Mr. Fogerty

Q. ——for this area?

Mr. Mattern: Objection.

Trial Examiner: Overruled.

A. Yes.

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[572] The document will be received in evidence as General Counsel's 13 in evidence.

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[573] Q. Mr. Howard, I'll show you what's been marked as General Counsel's Exhibit 14, and ask if you can identify that document?

[Document handed to witness.]

A. Again this is a Xerox copy of an original in our file of counts taken in Marion County, Indiana in 1967.

By Mr. Fogerty

Q. Okay. What is the date at the top? A. This shows the week beginning August 28, 1967.

Q. Okay. And for what road or highway is this traffic count for? A. This is on our Federal Aid secondary road No. 430. According to the remarks, it says located on S-430 0.05 mile east of Shadeland.

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Q. Is there another name commonly used for Road S-430? A. Yes. It's 38th Street, sir.

Q. Okay. And do the numbers in the columns for [574] each particular hour reflect the same information as does General Counsel's Exhibits 12 and 13 that you have already identified? A. Yes.

* * * * * * *

Q. Okay. Now, the columns immediately to the right of those figures are the figures 775, and then 921, and then a column still further to the right is the figure 854 and 992.

Are those traffic counts? A. Yes. Because at the start it says Start at 9:00 a. m., and we have a count from 9:00 to 10:00 of 517, and we started the counter at that time, from 9:00 o'clock on, [575] —or from 9:00 o'clock on Thursday, August 31st.

Q. I see. A. We count from 9:00 to 10:00.

Q. Okay. Now, it's a little unclear on my copy. What's the description of the weather on those particular days? A. This Xerox copy didn't come out very well, but I can see that they're all Norm except the Monday, 9/4, it's listed as HOLD, because that's a holiday. We do not count on that day.

Q. Okay. Now, is this the latest survey that your office has available for this particular location, this particular street, at this particular location? A. Yes, sir.

Q. Okay.

[Document shown to Counsel for Respondent.]

Mr. Fogerty: General Counsel would introduce what has been marked as General Counsel's Exhibit 14 for identification.

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[576] Q. This would show the flow in both directions? A. Both directions, sir.

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Cross-Examination

By Mr. Mattern

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[583] Q. But you have no idea that that's exactly the number of cars that went by there. A. No, sir.

Q. Thank you.

Trial Examiner: You mean there could be more, there could be less?

The Witness: There could be more or less.

Trial Examiner: How is that possible?

The Witness: Say two cars went over exactly at the same time. Say a truck had an extra axle. Let's say at the same time it went over a Volkswagen went by and it didn't count at all. You see, we figure if we're within 3% accuracy, that's all the Federal Bureau of Roads demands, and according to their formulas we are within the 3% limit.

Trial Examiner: How do you know that you're within the 3% limit?

The Witness: Oh, there's a formula, sir, that they developed in Washington that we check every year and we show our method of counting comes closer to the true total than the Bureau requires.

Trial Examiner: And your testing, and whatever else you do in connection with this, has established as a scientific fact that you are within 3% of accuracy.

[584] The Witness: As far as these counters——

Trial Examiner: As far as your methods go, you're satisfied that these counts which are portrayed on the exhibits that were just offered, General Counsel's 12, 13 and 14, are within 3% of accuracy.

The Witness: As far as I can—according to our formulas, yes, sir.

Trial Examiner: Yes.

By Mr. Mattern

Q. Mr. Howard, if you know the counter is operating correctly, you perform—apparently you perform no tests on this counter once you start the clock. Is that correct?

A. Well, I'm very sorry, sir, when the man sets the counter and starts the clock, then he watches to see the vehicles go by, maybe ten, maybe fifteen, to be sure that it's counting right before he leaves that. Then he comes back in four hours, and he goes through this same procedure again. Then he comes back the next morning, and he goes through this same procedure. Then he comes back the next afternoon and he goes through this same procedure.

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[588] **HAROLD J. SOWASH,**
a witness called by and on behalf of the General Counsel, being first duly sworn, was examined, and testified as
[589] follows:

Trial Examiner: Please be seated.

State your full name and address.

The Witness: My name is Harold J. Sowash. I am Accident Analyst, the Bureau of Traffic Engineering.

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Direct Examination

By Mr. Fogerty

Q. By whom, again, are you employed, Mr. Sowash? A. Mass Transportation Authority, Bureau of Traffic Engineering.

Q. For what government—Federal Government, State Government, or City Government? A. Well, we've just recently been taken in in May, it's countywise.

Q. Marion County? A. Yes.

* * * * * * * *

[590] Q. The figures that the Mass Transit Authority has on traffic flow and the amounts of traffic, are they gained

in any way differently from the way that Mr. Howard's state department gains those figures? A. No, sir. It runs about the same principle.

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[591] Q. I show you, Mr. Sowash, what's been marked for identification as General Counsel's Exhibit 15, and ask you if you can identify that?

(Document handed to witness.)

By Mr. Fogerty.

Q. And if so, what it is. A. Yes. This by location was 38th Street——

Trial Examiner: What is it, first?

A. (Continued) This is a Xerox copy of a traffic count taken from our files——

Trial Examiner: By "our files", you mean files of Mass Traffic Authority of Marion County?

The Witness: Yes, sir.

A. (Continued) The location is on 38th Street west of Lafayette Road. Now, when it says west of Lafayette Road this means this is where the traffic counter was sitting.

By Mr. Fogerty

Q. I see. A. Approximately 200 feet west of Lafayette Road.

Q. Okay. Could you tell us—— [592] A. I beg your pardon. I beg your pardon, gentlemen. It would be approximately 200 feet east of Lafayette Road since it is westbound traffic.

Q. This shows the traffic going in what direction? A. West.

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[593] Q. Mr. Sowash, I show you what's been marked as [594] General Counsel's Exhibit 16, and I ask you what the location was of the counter that was used to make that count?

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A. The location is eastbound on 38th Street. The counter was tied at west of Lafayette Road, and it's eastbound.

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Q. Okay. Now, I'll show you what's been marked as General Counsel's Exhibit 17, and I ask you what the direction was of the traffic that was counted, and approximately where the counter was?

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A. The direction is southbound on Lafayette Road, south of 38th Street. That means that's where the counter was.

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[595] Q. Okay. I show you what's been marked as General Counsel's Exhibit 18, and I ask you the direction of the traffic flow that was counted by that exhibit and the approximate location of the counter.

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[596] A. This is northbound on Lafayette Road. And the counter was situated south of 38th Street.

By Mr. Fogerty

Q. Okay.

Mr. Fogerty: Now, as I understand the stipulation of the parties, and I'll try to frame it, that the exhibits, what's been marked for identification as General Counsel's Exhibits 15, 16, 17, and 18 are Xerox copies of the records of the Mass Transit—Mass Transportation Authority showing——

Trial Examiner: The County of Marion.

Mr. Fogerty: ——for the County of Marion, Indiana, and the figures which appear thereon are the counts of the traffic broken down into hours of the day for the days indicated on the documents; and it should also be noted that all four of these exhibits—the traffic in all four of these exhibits, the traffic count was taken at approximately the same time, in the latter part of June in 1968.

Mr. Mattern: We will—Respondent will concede as to the date of the traffic count, and concedes that the figures shown in the body of the documents pertaining to the hours with figures beside them reflect the numbers that were on the tapes Mr. Sowash has referred to as being those same [597] figures which in fact appear on the tapes.

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[598] Trial Examiner: I will therefore receive the documents in evidence as General Counsel's Exhibits 15, 16, 17, and 18.

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[621] **CHARLES E. MERCER,**

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined, and testified as follows:

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[623] Upon conferring with Counsel for the Respondent it is the understanding of General Counsel that information—that Marilyn Ragle was the only employee so suspended for soliciting or for distribution of literature.

Trial Examiner: Is that agreed to, Mr. Mattern?

Mr. Mattern: To the best of my knowledge, yes, she is, Judge—your Honor. If they have some surprise evidence, why, I'll have to——

Trial Examiner: All right.

Mr. Mattern: To the best of my knowledge she is. If they have somebody else, we'll be happy to bring in the records.

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[624] Mr. Fogerty: And in this regard I would offer into evidence what has been marked as General Counsel's Exhibit 19 and General Counsel's Exhibit 20, which are Xerox copies of two pages of Rand McNally mileage guides, and particularly it's the index of counties, cities and towns [625] with populations, and it shows the 1960 census figures.

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[626] Trial Examiner: Can I rely on this if I have to make a finding as to Indianapolis in 1960?

Mr. Mattern: In 1960. We have no objection to that.

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Direct Examination

By Mr. Fogerty

Q. Mr. Mercer, are you employed? A. Yes, sir.

Q. By whom are you employed? A. Retail Clerks Local 725.

Q. In what capacity are you employed by Retail [627] Clerks Union Local 725? A. Director of Organization.

Q. How long have you been so employed? A. Since March, 1967.

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[629] Mr. Fogerty: I'm attempting, your Honor, to lay a foundation so that this witness will be able to testify as an expert in his field, that is organizing as to various matters which are quite relevant to this case.

Trial Examiner: Will you agree to the witness' expertise, Mr. Mattern?

Mr. Mattern: Sure.

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[632] Q. ——with several years experience in organizing, what different types of methods of organizing are there that can be used?

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A. One is passing out literature, or handbills with an authorization card attached to it;

[633] Another one is making home calls, talking to people in their homes;

Another method is talking to employees in the parking lots.

Another method is used in group meetings, maybe in a restaurant, or coffee shop, et cetera.

Q. Did you ever make use of a telephone call? A. Yes, sir.

Q. Which, in your opinion which method is the most effective as far as the end purpose of securing a majority of the employees in a particular unit?

Mr. Mattern: Objection as being immaterial.

Trial Examiner: Overruled.

A. The home calls.

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[635] Trial Examiner: You mean all of your organizing has been in retail except for the one which was a pants factory?

The Witness: Yes, sir.

Trial Examiner: I see.

By Mr. Fogerty

Q. And has your experience covered both stores located in what are known as shopping centers and also stores in downtown areas where there are sidewalks? A. Yes, sir.

Q. What is the difference in methods that have to be used in organizing stores located in downtown areas where there are sidewalks as opposed to stores located in shopping centers? A. At the downtown areas I can stand on the sidewalk and get there in the morning before the shift starts going into the building, ~~and~~ pass out literature or handbills and authorization cards, and et cetera.

Q. How does that differ from problems in organizing stores located in what are known as shopping centers? A. Well, we have attempted, and have done it also, talked to the people in the parking lots as they go to work, or they get off from work.

Q. Are there any sidewalks in shopping centers? [636] A. No, sir.

Q. By sidewalks I'm referring to publicly—— A. No, sir.

Q. ——owned sidewalks. A. No, sir.

Q. Is there any difference in problems in organizing new stores as opposed to older established stores? A. Yes, sir.

Q. What are the differences in problems, there? A. Well, in older stores that's been open for a while, a period of time, you make one contact with a person and they will usually have access, or knows the other employees they're working with, where they live, or their phone number, they live on Guilford, whatever street it may be, they may not know the exact address but they give the street they live on, the name. We can go to the library and check in the Criss-Cross to get their actual address on it. Or sometimes in an old place establishment they may have a Christmas card list, or something they can furnish us a name or address. They're just closer knit than in a newer store.

Q. Well, do you have the same availability of names and addresses in new stores as you've just testified as to the older stores? [637] A. No, sir. Our experience has been in a newer store, of course they haven't been working with each other, or their fellow employees for a long period of time, and they're just not—they won't know what street they live on, they don't know their phone number, actually they don't know several employees' last name.

Q. Now, you've testified a moment ago that the best method insofar as being able to sign up on authorization cards a majority of the employees in a particular unit is in making house calls. A. Yes, sir.

Q. Are there any problems that are encountered in making house calls, and if so what are these problems? A. Yes, sir. The first problem is of course getting the employee's name and his address, and then getting directions of where he's living. And several times we've found after we make the home call that we may have to go back on an average I'd say five to six times in order to actually make contact with the person you're seeking.

Trial Examiner: You mean before you actually meet the person? They're not home, or something like that?

The Witness: Yes, sir.

By Mr. Fogerty

Q. Is there any problems in actually finding the address, the correct address of a particular person even though [638] you know his name? A. Yes, sir. There's several ways we go about attaining addresses. One, as I say, if the name is a rare name, and there's not too many, we go through the phone book, and if there's six or seven of them, we'll call these six or seven parties in order to attain the right person working at the right establishment.

And if there's several persons by the last name in the phone book, then we go to the library and use the City Directory to try to find the employees' names, and where they're employed. Or if it's a lady working in the store we can go to the library, and we'll have a husband's name and their name will be in parentheses and we'll get the address. We may have three or four listed this way. And we'll go back to the office and call these three or four to try to pinpoint the right person working in the store.

Q. You just made reference to finding a lady's name. As far as retail stores are in general are there more men or women working in these stores? A. More men—more women, excuse me.

Q. Which is it? A. More women.

Q. Do you actually find these women's names in phone books? A. Very relevant—very seldom. Because the phone **[639]** is usually listed in the husband's name.

Q. Now, with reference to the difference between organizing stores located in smaller cities as opposed to stores located in larger cities, is there any difference in the problems in finding people once you have at least what you think to be the correct address of the person? A. Yes, sir. It seems like—well, it is a fact that in a smaller town the person might not be home but—when you go there, but of course we have a practice of going next door and asking the neighbor what time the employees usually work, or if they know what time they'll be home. And in a smaller town they usually know about what time a person will be home, or their day off, or something, which aids us in going back the second or third time to catch them.

Q. And is this same situation usually in a larger city? A. No, sir.

Trial Examiner: In a large city you always find a person at home more often than not?

The Witness: No, sir. If they're not at home, and you go to their neighbor, they don't know where they're at, or when they're due back. They're just not as closely knitted as in a small town.

By Mr. Fogerty

Q. Now, with regard to looking up names in phone [640] books what problems are there in relation to what are known as unpublished or unlisted phone numbers? Does this become a problem? A. Yes, sir. It of course is unavailable if they're not published, or unlisted, and you have to exhaust other means to locate the person's address.

Q. Do you run into this more often in larger cities or in smaller cities? A. There again——

Q. Or is there——. A. ——it's in larger cities. It seems like people, they move around a little bit more; they're not as stable as they are in smaller cities.

Q. With reference to your making house calls, is it common that you come up with an address for a particular employee and the address will be a rural route number? A. Yes, sir.

Q. Well, how do you find a rural route, where he lives, when you've got that? A. In a smaller town you usually go to the grocery store or a filling station and they can give you directions; or you go to the post office, and usually they'll help you draw a map to attain the person's directions where they live.

Q. Are you able to usually find it on the first try by the use of a map? [641] A. Usually so.

Q. Now, in an organizational campaign of a store, other than a store in the downtown area, what use is made of the store's parking lot by the organizers, if any? A. We try to sign employees up on the authorization cards in the parking lot, or at least if they are unfamiliar with unions to try to attain their address and set an appointment up with them and maybe come out to their home and discuss it with them.

Also we try to familiarize ourself with the employee's car, and this is the fact that if we go in the parking lot and see this employee driving a particular car and this car is there, then we can assume that he's not at home. Or if his car is gone, then we'd go to his home and try to make an attempt to call him at his home if his car is not on the parking lot.

Q. Now, there's been some testimony up to this day concerning license numbers. Do you make use of license numbers in any way? A. Yes, sir.

Q. Now, how do you get the license numbers, first of all? A. Well, after we're working on a campaign for a period of time we become aware where the employee usually park his cars, where the cars are usually parked. We copy **[642]** down the license number. Maybe they're there two or three times, say on a Friday, and a Saturday, and a Monday, something like this here, and if this car remains—the license number remains on our list, then we're pretty sure that this employees—this is an employee of the company and not a customer.

Q. Okay. So that you can determine fairly accurately, if I understand your testimony, you can determine fairly accurately the cars of the customers as opposed to the cars of the employees, if the employees' cars turn up more often on your list. A. Yes, sir.

Mr. Mattern: Your Honor, I object to that. That's a statement by Counsel. It's not exactly leading because it's not a question. It's a speech.

Trial Examiner: Sustained.

Mr. Mattern: As a matter of fact——

Trial Examiner: I sustained your objection.

By Mr. Fogerty

Q. Okay. Mr. Mercer, once you have the license numbers, how does this help you? A. It does in two ways at least. One way we have the license number; and then if we're able to find out who the car belonged to, and by taking a license number, and it doesn't appear——

[643] Trial Examiner: Checking it with the——

The Witness: With our master list, sir.

Trial Examiner: Master list.

A. [Continued] We make up. And if by checking the license number does not appear for a week, or two weeks, it's not there, then we can pretty well assume that this employee is no longer with the company. It helps us keep up with the turnover of the employees.

And another method is we are able to attain some addresses through the license numbers.

By Mr. Fogerty

Q. Is it possible through the use of the license numbers to determine any other aspect of the employee's job? A. Yes, sir. Also when we write down their license number we write down on our list the day we take it, if it's the day shift like at 11:00 o'clock, or if it's at 8:00 o'clock at night, and we do this for the same period of time every time we take the license number, and this enables us to be more—have a better chance of catching an employee home, because if the license number appears at 11:00 o'clock every day, or in the morning shift, we can pretty well assume that this employee works days and we have a better chance of catching him in the evening, or vice versa.

Q. You say you have a better chance of catching him in the evening. Where do you catch him? [644] A. We have the right address, in his home.

Q. Does your union make any use of TV or radio advertising, or newspaper advertising in its campaign? A. No, sir.

Q. Is there any particular reason why you don't make any use of this via——

Mr. Fogerty: Strike that.

By Mr. Fogerty

Q. Is there any reason why you don't use TV, radio, or radios to contact employees? A. Yes, sir.

Q. Just tell us what the reason is. A. Well, there's two reasons. Number 1—there's a cost factor, which is quite high.

Number 2—we have several radio stations in the Indianapolis area, around 15 at least. It would be hard to distinct which one radio station to put the advertisement on.

And also we have several newspapers, different newspapers, I believe there's around 40 in the Indianapolis area; and TV stations, we have four TV stations here also. And like I say, it would be very expensive in addition to not knowing which station to put it on.

Mr. Fogerty: This is General Counsel's Exhibit 21.

[Whereupon, the document **[645]** above referred to, was marked General Counsel's Exhibit No. 21, for identification.]

[Document handed to Counsel for Respondent.]

By Mr. Fogerty

I show you what's been marked as General Counsel's Exhibit 21 for identification, and ask you if you can identify that?

[Document handed to witness.]

A. Yes, sir.

By Mr. Fogerty

Q. Well, would you tell us what it is? A. This is——

Q. If you know. A. This is a listing out of the Indianapolis phone book of the radio stations that is in Indianapolis.

Q. Okay. Is that the phone book itself? A. No, sir.

Q. What is it? A. It's a photostatic copy, page 609.

Q. Okay. And where—You say this is the radio stations? A. Yes, sir.

Q. Where does it say radio stations in this document? What approximate area of the document? [646] A. It's in the third column from the left it starts, and then it goes on over to the fourth column.

Q. Okay.

Mr. Fogerty: General Counsel would introduce what has been marked as General Counsel's Exhibit 21.

Mr. Mattern: No objection.

Mr. Fogerty: No objection?

Trial Examiner: Let me ask you a question about this, Mr. Witness. For what year is this phone book published?

The Witness: 1968.

Trial Examiner: The document is received as General Counsel's Exhibit 21 in evidence.

* * * * * * *

[647] Trial Examiner: What is 22?

Mr. Fogerty: 22 being a Xerox copy of page 755 of the 1968 Indianapolis yellow page directory, which on this shows, among other items, television stations and broadcasting companies in the third column at the top of the page.

Trial Examiner: Is there any objection to it being received?

Mr. Mattern: No.

* * * * * * *

[648] Mr. Fogerty: General Counsel's Exhibit 23 is a Xerox copy of page 498 of the Indianapolis telephone directory, yellow page section, for 1968. It lists, starting

with the first column the column to the left the newspapers in the Indianapolis area, and continues to the second column.

Trial Examiner: Any objection to that?

Mr. Mattern: No objection.

* * * * * * *

Q. Are you familiar with the organizational campaign that was conducted at the two Central Hardware stores here in Indianapolis? A. Yes, sir.

Q. When did this campaign start, if you know? A. On the West Store, about May 21st, 1968; and on the East Store, about, approximately a week later.

[649] Q. Okay. What did this campaign consist of when it started? A. Asking the employees to sign authorization cards authorizing the Retail Clerks Local 725 to represent them.

Q. Where did you ask the employees to sign the cards? A. In the parking lot of Central Hardware West Store.

Q. Did you make any home visits during the first two or three weeks of the campaign? A. Not that I recall.

* * * * * * *

[668] Q. Mr. Mercer, is there any organizing value in an organizer of the union walking through the Respondent's stores——

* * * * * * *

A. Yes, sir.

By Mr. Fogerty

Q. What is that value? A. Number 1—it's a record of communication by **[669]** walking through the stores. He observes the employees' name tags; and also what department they're working on—working in at the particular time. And then we can put this information, after we've sort of memorized it, and we get outside the store we write the employee's name down, the department they're in, and we bring it back to the office, put it on our record. Another reason for going in is the fact to try to keep up with the turnover, to see if the employee is still working at the store, or if the Respondent has hired a new employee, and a new employee appears in the store, then we attain their name and address on their name badge, and we start trying to attain their address through the other means I have already described.

* * * * * * * *

[672] Q. Referring to that area of land located between Lafayette Road as it runs north from 38th Street and 38th Street as it runs east from Lafayette Road, what is located in that section of land?

* * * * * * * *

[674] A. On the north side of 38th Street there is a Burger Chef, and also behind that area is a shopping center known as Lafayette Square: and on the immediate corner there is a Shell service station.

* * * * * * * *

[677] Q. Okay. Now, directing your attention to that area which is north of the Central Hardware East Store, north of 38th Street, what is located there? A. There's a restaurant known as Knobby's.

Q. That is located on which side of Shadeland Avenue?

Mr. Mattern: Objection. This is immaterial, your Honor.

Trial Examiner: Overruled.

A. This would be on the east side of Shadeland, on the north side of 38th Street, on the corner.

By Mr. Fogerty

Q. Okay. Is there anything that you recall being on the west side of Shadeland Avenue but north of **[678]** 38th Street? A. Yes, sir. There is a small shopping center. It consists of a supermarket, a White Castle, a drug store, and a couple other small businesses that I don't know what they are.

Q. By White Castle what are you referring to? A. It's a restaurant.

Q. Okay. Are there any homes in this area? A. No, sir.

* * * * * * *

Q. Mr. Mercer, you've testified you had experience in organizing stores located in parking lots. When these— [679] Is there any problem in telling customers from the employees when these employees are leaving the parking lots? A. Yes, sir. Until they get right up on you, and then you might recognize them. Or it's possible they could have on their orange jacket. Of course in the wintertime they would have their coat on over it.

Q. Do you encounter this problem at these two Central Hardware stores? A. Yes, sir.

* * * * * * *

Q. What is your knowledge insofar as when these employees come to work? A. Well, they have a shift coming in around 8:30 in——

Trial Examiner: This is applicable to both stores?

The Witness: Yes, sir.

A. [Continued] ——coming in around 8:30 a. m., and getting off work anywhere from 5:00 to 6:00, depending on their lunch hour, if they take an hour or half-hour.

[680] By Mr. Fogerty

Q. Okay. Is there any other shifts of these employees? A. Yes, sir. They also have part-time employees that come in at various hours, maybe 10:00 to 2:00, or 1:00 till 10:00 is another normal shift, I believe.

Q. Okay.

Trial Examiner: Now, I'm confused. Part-timers come 10:00 to 2:00. And then there's a regular shift, regular full-time employees from 1:00 till 10:00. Is that what you're saying?

The Witness: That would be considered full-time. They have other part-timers that come in at different hours, some from 4:30 to 10:00 o'clock.

Trial Examiner: Part-timers come in at all hours.

The Witness: Yes, sir.

Trial Examiner: The second shift comes in at 1:00 and stays till 10:00.

The Witness: Yes, sir.

By Mr. Fogerty

Q. To your knowledge are there any employees arriving at this store, at either one of the stores between the hours of 10:00 p. m. and 8:00 o'clock in the morning? A. No, sir.

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[684] **Further Direct Examination**

By Mr. Karmel

Q. Mr. Mercer, going back to the time that the campaign first started, I believe you mentioned the date around May 21, around that time, when the campaign first started. In any event did you at that time on that date have a list of employees' names and addresses? A. No, sir.

Q. How and when did that list come into being, sir? **[685]** A. As the program progressed; as the employees signed cards, we transferred this information on to a list we kept of names and addresses and phone numbers; or while we were talking to an employee on the parking lot, if he did not want to sign a card, or if he wants to think it over, or wants some more information about the union, we tried to attain his name and address and set an appointment up with him, or at least attain his address and go out and talk with him later on.

* * * * * * * *

Q. Where—how were the names obtained that ultimately went onto this list that you maintained? A. Well, they were attained through talking to employees on the parking lot when they got off work, or before they went in on their lunch hour, and et cetera.

Q Were there any other sources of obtaining the names? A. There was another source. It was limited to the fact that if we asked who we talked to if they knew anyone else in the store, and once in a while they would happen to know maybe a person's last name but not their complete name, or maybe their first name. If they just [686] knew their first name we'd ask what department they worked in, and if they said plumbing we'd put down the employee's first name in our records, and in the plumbing department, then later on we'd talk to someone else we'd try to attain the—match up the last name with the first name.

* * * * * * * *

[687] Q. Yes. Going to on or about July 22, 1968 do you have an estimate of how complete a list of names and addresses you had? A. Yes, sir.

Q. And can you give us that estimate? A. Approximately 80%.

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[690] Trial Examiner: In other words, as I understand this question, it is whether—in this witness' opinion whether this witness has an opinion as to whether an effective list in a park lot store——

Mr. Karmel: Yes.

Trial Examiner: ——can be put together by a union organizer——

Mr. Karmel: Yes.

Trial Examiner: ——without—if the union organizer is prohibited——

Mr. Karmel: Yes.

Trial Examiner: ——from access to the parking lot.

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[691] A. It is almost impossible.

By Mr. Karmel

Q. The first question was do you have an opinion on this subject? A. Yes, sir.

Q. All right. Now, if I may, what is your opinion, sir? A. It is almost impossible to attain a list, without the use of the parking lot, like I already testified, particularly in a new store it is much more difficult.

Trial Examiner: How about just going directly to the store manager of the store and asking him for list?

The Witness: This is what we would prefer. Our experience has been that the store managers of course will not furnish us such a list.

* * * * * * *

[692] Q. Now, Mr. Mercer, following July 22, 1968 do you —were you able to maintain your list at what you estimate to be 80% of completion? A. No, sir.

Trial Examiner: Will you explain that, please? [693] I'm not sure I understand the significance of your answer.

The Witness: We were not able to complete the list and keep it up to date as it was prior to July the 15th.

Trial Examiner: You mean the 80%.

The Witness: It dissipated because we were not allowed, if I may, on the parking lot, to have access of talking to the employees, new employees that they hired in, and the old employees was quitting: As long as we had access, and knew an employee, recognized the face, name tag, or something, we would ask his name and address. When this was ceased, then we could not complete—keep an up-to-date record.

Trial Examiner: Even at the 80% capacity?

The Witness: Anticipated, yes.

* * * * * * *

[697] Q. ——July 15th, sir, after July 15th, do you have any estimate as to the number of employees, new employees hired? A. The only estimate I could have would be based on the employees that had left the employment. I assume they were replaced. The actual percent or count, I can't answer.

* * * * * * *

[698] A. [Continued] Well, the reason we did not know how many new employees is because we were not allowed on the parking lot to observe for ourself the new employees, or observe taking license numbers of a new car coming, or allowed in the store to maybe pick up a name tag, or something like this.

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[699] Q. Mr. Mercer, I hand you General Counsel's Exhibit No. 4, the plot plan of the West Store.

[Document handed to witness.]

By Mr. Karmel

Q. Mr. Mercer, if I recall your prior testimony correctly, the line in yellow denotes the property leased by Central Hardware.

* * * * * * *

Q. In your opinion could you, if stationed anywhere outside the yellow line, anywhere outside of that yellow line on that plot, contact the employees? A. No, sir.

Q. And could you explain why that is so, or your opinion is so? A. If you stationed yourself on the east side of [700] Central Hardware, known as Fashion Fair Square and Morris Plan there, the employees, they park their cars, leave their automobiles and go to work, or leave work and go to their automobiles, they park their cars on the opposite side;

Or if you would station yourself in the entrance/exit, as marked A, it would be hard to distinguish the customers from the employees until they got up on you, and once you had distinguished the difference then it would cause a traffic tie-up or jam there, if you was to talk to them while they was in the car waiting to go out on 38th Street.

* * * * * * *

A. [Continued] Or if you stationed yourself on the west side of Central Hardware, there's an open field there and a ditch, about a 4-foot ditch there also.

And if you stationed yourself on the back side or the south side of Central Hardware, there's an open [701] field, and no employees—they don't go back there, they don't park in back of the store.

Trial Examiner: Do the employees move over to the west side everytime when they get in and out of their cars?

The Witness: Yes, sir; on the west side.

* * * * * * *

Q. Do the employees, from your experience on that lot, do the employees enter either from the point marked A or the point marked B and proceed without stopping to the parking area within the yellow line? A. Yes, sir, they do.

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[702] Q. Again, sir, pointing to General Counsel's Exhibit 5, if my recollection is correct, the property leased by Central Hardware is indicated by the yellow line.

Mr. Karmel: Hearing no correction——

Mr. Mattern: That is correct, Mr. Karmel.

By Mr. Karmel

Q. Now, sir, I will ask you the same questions as I did on the west property as to this east location.

Stationing yourself outside of the boundaries of the yellow line can you communicate with the employees, **[703]** and by communicate with them I don't mean can you shout to someone from a distance and call attention—call their attention; when I use the term I mean can you talk to them about the union?

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A. On this Central Hardware in the back part, or on the west side in back of the store there again is an open field.

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A. [Continued] And then on the southwest side of the store there again is an open field.

By Mr. Karmel

Q. Well, can you communicate with the employees? A. No, sir.

Q. If you stand in the open field? A. No, sir.

[704] Q. All right. A. No, sir.

And in the northeast corner on the south side—excuse me—on the southeast section there there is a truck stop there, and you can't communicate there, with one exception. If the employees would use this exit from Central Hardware to the Blue & White Truck Stop——

Trial Examiner: Well, do they?

The Witness: No, sir. Well, once in a great while they might, if the traffic is bad on the place, they might, but it's very rare that they would.

A. [Continued] And on the front, or the east of Central Hardware there's Shadeland Avenue or State Road 100, which is a dual highway, and there again you can't—It's my opinion that you cannot talk to people when they're trying to get out on the dual highway there.

Trial Examiner: Why not? Why is that your opinion?

The Witness: Because the road is traveled so heavily, and it would tie up traffic behind you, and therein you would not know if it was an employee or a customer until they would get up to the extrance/exit, and then every time you could not be sure unless you would happen to know what kind of a car this particular individual was driving, or recognize their face.

[705] And on the north side of Central Hardware, the northwest, it's open field again.

And on the northeast——

By Mr. Karmel

Q. Well, could you from that open field communicate with the employees? A. No, sir.

Trial Examiner: Why not?

The Witness: Well, there is weeds—it might be possible—it's weeds and everything.

Trial Examiner: Well, let me ask you this question. Do the employees ever drive their cars alongside that open field, or through the open field?

The Witness: No, not—no, sir. They do park—well, facing the open field. But for an employee to get out of his car and come over to the field, it is my opinion no employee would do this.

A. [Continued] And the other—On the other parking areas, as designated on the map in pink, on the north side of Central Hardware it's already been testified there was a fence on one side, the car wash, which would prohibit you from talking to the employees there.

And on the front, on the east side I believe is a fence. I may be wrong in that. I really don't know on the east side of the parking lot there.

[706] And the other exit or entrance to Central Hardware is on 38th Street, which is a little distance from the store, and it would be hard there again to distinguish for the— between the customer and an employee if you were to stop them before they enter—before they exit on to 38th Street.

By Mr. Karmel.

Q. Well, do I understand, then, as far as the entrances are concerned, in addition to distinguishing you would have to actually stop the vehicle in some way? A. Yes, sir.

Q. Then, in other words, the individual driving then does not automatically stop at that point, that entrance point, or driving out automatically stop at that point. A. Well, they more or less automatically stop at a stop sign.

Q. Oh, I see. There's a stop sign.

Trial Examiner: Where is that stop sign?

The Witness: Before you enter onto 38th Street.

Trial Examiner: At E?

The Witness: Yes, sir.

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[707] Trial Examiner: Where else is there a stop sign that's indicated on this plot?

The Witness: I do not believe there is a stop sign at either of the entrances off of 38th Street or off of 100— excuse me.

Trial Examiner: How about 100 or Shadeland Avenue?

The Witness: No, sir. There's no stop sign.

Trial Examiner: Well, do all the employees use, as far as you know, how many employees use that road D-E in coming to or leaving the premises?

The Witness: I would have to say just about half of them. There again it depends which way they live from there, and they live in all directions from there.

Trial Examiner: So you really don't know how many use D-E, how many use the entrances which are off **[708]** of Shadeland Avenue.

The Witness: No, sir.

By Mr. Karmel

Q. Do any of the employees who worked out at Central Hardware during that period of the campaign, were they under 21? A. Yes, sir.

Q. Is there any unusual difficulty in obtaining home addresses through the telephone directory in dealing with young people? A. Yes, sir.

Q. And what is that difficulty? A. There again we have to go through the process of elimination. Where we have a last name, and there's six or seven in the phone book we'll call six or seven and attempt to see if Joe Smith—if this is Joe Smith's residence, and if he works at Central Hardware.

* * * * * * *

[709] **Cross-Examination**

By Mr. Mattern

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[713] Q. Did you—Is Mr. Kapetanakis the only nonresident union organizer in your union who came in for that campaign? A. No, sir.

Q. Well, you say there was nobody from outside Indianapolis, but you say he wasn't the only one. A. Yes, sir.

Q. Well, were there other union organizers in this campaign from outside Indianapolis? A. Yes, sir.

Q. About how many? A. Three or four.

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[721] The Witness: But, your Honor, along with—at this particular time, also, some of the international representatives, and the other gentlemens I referred to here, is three, at the other Indianapolis locals here went on other assignments; and also one of the business agents, which there's six of us in our local, has other duties besides organizing, one of which is servicing the stores, and handling grievances, and everything. And since the whole month of June was tied up in the international election, the first part of July was allotted to going into our union stores, checking them out as far as the members, and that, and handling grievances, and et cetera.

* * * * * * *

[734] Q. At this same time when he was a full-time, salaried employee of Central Hardware was he also a **[735]** full-time, salaried employee of the union? A. Yes, sir.

Q. And you knew at that time that he was also a full-time, salaried employee of Central Hardware, didn't you? A. Yes, sir.

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[736] Trial Examiner: I think you're right. I think the fact is we have established quite conclusively that Stahl was while working for Central Hardware also working for the union.

Mr. Karmel: Yes.

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[737] Q. Now, during this time was Mr. Stahl supplying you with names and addresses of employees? A. Yes, sir.

Q. And besides Mr. Stahl weren't there other employees in the stores who were not on the union payroll but were interested in seeing the employees organized in those stores? A. Yes, sir, there were.

Q. Marilyn Ragle was one, wasn't she? A. I assume she was interested in getting the union in.

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[742] Q. And things were going so nicely out there on the lot you didn't bother to ask for a list of the employees? A. This is true.

* * * * * * *

[745] Q. As an expert on union organizing, on union organization, is it your testimony that when you get these—or when Mr. Stahl, and the rest of your people give you license numbers that you have no way to find out who owns that car? A. No, sir.

Q. You do have a way, don't you? A. Yes, sir.

* * * * * * *

[746] The Witness: I never testified that we took them down. I testified, your Honor, that we have obtained addresses through license numbers.

Trial Examiner: By checking them through motor vehicle records?

The Witness: Yes, sir.

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[752] A. In fact we were kidding like this. Then we got into another conversation. He was at the time trying to move up here, trying to find a place to move to, and I was telling him some of the places where he might find some houses. But he didn't request it of me, request me to leave, force me to leave.

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[761] Q. But isn't it a fact that there are only really two newspapers of general circulation, that the rest of these are little neighborhood newspapers? A. Yes, sir.

Q. Now, also isn't it your—isn't it a fact that based on your experience as a Retail Clerk Union organizer, you're bound to be familiar with retail clerks, isn't it your experience that these people ordinarily read the newspapers **[762]** to watch the ads of the stores in which they work so they're familiar with what's on sale and what isn't on sale? A. I assume so.

Q. Well, is it or isn't it? A. I have no way of knowing. I would assume that would be a fact. I don't know.

Q. Is it your opinion? A. This is my opinion.

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[771] Q. Now, between the—Directing your attention to the entrance off Shadeland that is furthest to the left as we look down at the plot plan, isn't there an area between that entrance and the center entrance that is not **[772]** parking lot, that is not a traveled portion of the roadway; is there not an area there of that description? A. Yes, sir, I believe so.

Q. Isn't that area level and grassy? A. Yes, sir, I believe so.

Q. And the Central Hardware parking lot on the east boundary, which is the boundary we've been referring to, does not in fact abut the traveled portion of Shadeland Avenue. Isn't that correct? A. I believe you're correct.

Q. Now, directing your attention to the area between the center entrance on Shadeland Avenue and the entrance furthest to the right; is there not an area between the traveled portion of the roadway and the Central Hardware parking lot which is not part of the traveled portion of the roadway but is in fact level and grassy? A. Yes, sir, I believe so.

Q. Now, if a—To direct a hypothetical question, if a union organizer stood in these two areas we've just now described as these level, grassy areas between the traveled portion of Shadeland Boulevard, Avenue, or whatever it is, and the edge of the Central Hardware property, if a union organizer stood there as the employees were leaving for the day, and if he had a list of license numbers and was able to identify all, or almost all the **[773]** employees' automobiles, could he not stand in safety to himself and others on either one of those level, grassy areas and offer union literature to employees leaving the Central Hardware parking lot through those two entrances, three entrances, I'm sorry. A. The first part of your question, it would not be any danger to the union organizer or representative to stand in those positions.

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Q. A union organizer could safely stand out there and offer literature to Central Hardware employees, couldn't **[774]** he? A. Yes, sir.

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[775]

Redirect Examination

By Mr. Fogerty

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Q. On another area of your testimony, based on the many times you've testified that you've been out at the two Central Hardware stores in Indianapolis, do all the employees drive their own cars to work? A. No, sir.

Q. How do they arrive at work if they don't drive their own cars, if you know?

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[776] A. Yes, sir.

Some of the employees ride with each—they ride with a fellow employee working there; or maybe the husband will come by and drop his wife off, or vice versa, and the husband will go on about his work, and comes back and picks his wife up that night, or husband.

Q. So if you go out and get the license numbers off of each and every employee's car parked on the two parking lots is there any assurance that you've got license numbers for each employee? A. No, sir.

Q. When you're out there taking down license numbers off of cars, and you've testified that you do have a means of checking back to find out who that particular car is registered to, have you ever checked back on a number that you found at one of the two Central Hardware lots and found that it was not an employee? A. Yes, sir.

Q. How do you know that it was not an employee? A. Upon making contact with the individual we found in some cases that the car may be registered to another person. For instance; if it's a young teen-ager, or something, his dad—the car may be registered at his [777] father's address, thereby giving his father's address. We have the wrong address at that stage. We need the father's address to have the correct address, as the case may be.

Q. Had you finished? A. And another thought that has escaped me.

Q. Well, do you ever get names and addresses through the use of license numbers of customers at the store? A. Yes, sir.

Q. Tell us, these license numbers that you've been getting off of cars, are there any out-of-state license numbers that you've assumed to be employees' cars? A. ~~As~~ I recall, there's only two or three out-of-state.

Q. And the rest of them are Indiana? A. Indiana, yes, sir.

Q. Where are the license plates located?

Trial Examiner: I didn't hear you.

Mr. Fogerty: All right. Withdraw that question. I'll rephrase it.

By Mr. Fogerty

Q. Where on the car is the license plate required to be attached in Indiana? A. This is at the back of the vehicle.

Q. Now, just a moment ago you testified that on cross-examination that——

[778] Mr. Fogerty: Strike that.

By Mr. Fogerty

Q. Assuming a union representative or organizer was standing on one of these grassy areas between Central Hardware property and the traveled portion of either 38th Street or Lafayette Road or Shadeland, and there was a car coming towards you; assuming you had the license numbers of all the employees' cars. Could you tell whether that particular car was an employee's car or not? A. Not in all instances. In some instances, yes. The majority, no.

Q. Could you tell this from the license numbers you had? A. No, sir. It would have to be from making a physical description of the car, the color, what make it was, and——

Q. Why couldn't you tell from the license number? A. Because the license number is in the rear of the car.

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[860] **GERALD E. HOWENSTEIN,**

a witness called by and on behalf of the Respondent, being first duly sworn, was examined, and testified as follows:

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Direct Examination

By Mr. Mattern

[861] Q. Mr. Howenstein, what's your occupation? A. I am Store Manager of Central Hardware East Store.

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[873] Q. Do you provide a lunchroom or a breakroom where the employees can go during their break? A. Yes, sir.

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[884] **SIDNEY D. ESKENAZI,**

a witness called by and on behalf of the Respondent, being first duly sworn, was examined, and testified as follows:

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Direct Examination

By Mr. Mattern

[885] Q. Mr. Eskenazi, do you have a profession? A. Yes, sir.

Q. What is that profession? A. I'm a practicing attorney.

Q. Do you also have an occupation besides being a practicing attorney? A. I'm a real estate developer.

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[890] Trial Examiner: Let me see if I can cut this short. Are you trying to establish the man is an expert in the shopping center business?

Mr. Mattern: Yes, sir.

Trial Examiner: Do you concede his expertise, gentlemen?

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[891] Mr. Karmel: I do concede, sir, that he is an expert in putting these shopping centers together.

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[892] Q. Now, we've used the term shopping center somewhat here. Could you describe what in your opinion a shopping center is? A. Well, we have to try and distinguish a shopping center from a free-standing store.

A shopping center is a group of stores put together by a developer, all occupying a common acreage area with common parking, common entrance and exits, and all working towards a common purpose which is to promote that particular shopping center and draw people there. The center normally—well, it's almost impossible to build them without a grocery supermarket, to attract people; a drug store, and in most cases you have a department store, or so-called discount department store, **[893]** some kind of a department store of some kind. And then you have what we call satellite stores, which consist of the beauty shop, and the barber shop, and a shoe store, and maybe a small variety store, and maybe a restaurant, and a few other things here and there.

* * * * * * *

[897] Q. When you on your own behalf, or someone else's behalf decide to make a decision to develop a piece of real estate into a shopping center how do you go about it? A. Well, to start——

The Witness: If I may have the time, sir.

Trial Examiner: Sure.

[898] A. [Continued] Let's start at the beginning. I must determine for myself an area of the country, city, county, state where I believe there is an opportunity for major tenants to locate a store, and where they will do business and be happy doing business.

Once I locate an area, then I try and find a site. I'll define the characteristics of what would make a good site, including utilities, roadways, accessibility, and people, and retail sales, so on and so forth.

Once I find a site, then I start approaching various tenants, as I explained to you previously. When I go to a tenant and say, "I have a site in XYZ city," they want to know who are my majors for the shopping center, and I believe that consists of who is the department store, who is going to be the draw, the pull. They also want to know who is going to be my market. The market also pulls a lot of sale. The average housewife will visit a market once or twice a week; therefore, she is important for the center.

Mr. Karmel: So I can follow, Mr. Trial Examiner, by market is he referring to a grocery store or supermarket?

The Witness: I'm referring to a grocery supermarket.

Mr. Karmel: Yes, sir.

A. [Continued] We will also in putting together a **[899]** shopping center want a drug store, a shoe store. We will try and have clothing stores, men's clothing, women's clothing, children's clothing. We will then want a variety and the so-called satellite and service tenants, which consist of the beauty shop and barber shop, and the cleaner, and the laundry, and the various things that perform services for the average purchaser.

We want to put all these stores together under one roof, so to speak. And they'll all be on a common parking area. The tenants' question is "How many cars parking do you have in this area to service all of your tenants?" And normally a merchant's association will be formed of all the tenants to help promote the center and bring people to the center. And the landlord will be asked to participate in this merchant's association, contribute a certain amount of money each year to pay for the advertising and the bringing of attractions to the center.

Now, the landlord will manage the center, collect the rents, and pay the cost of maintenance, and the taxes, and his mortgage payments, and whatever is left he keeps as his profit.

Now, I don't know if I've explained it to you but it takes—there's a great deal of work involved in putting one of these together.

By Mr. Mattern

[900] Q. Is it ordinarily—is the design that you've described ordinarily so that a person can go there and do all of their shopping without moving? A. Ordinarily we try to create a center where a customer can make one stop and satisfy almost 100% of his needs.

In other words, he can do his grocery shopping, drugs shopping, stop in the department store, buy clothing, maybe even visit the beauty shop, barber shop, or drop off his dry cleaning, and a few other little items.

Q. When you are approaching tenants do—you talk to them about the traffic that is being generated? A. Yes.

Q. If so, what do you mean by the traffic that is being generated? A. Well, we talk to them about the pull that our tenants will have to bring traffic to the shopping center. And that ~~is~~ also dependent upon the traffic that goes by the site, and it is dependent upon the number of people in the given retail trading area.

Q. What does pull—you've used the word pull. What does the pull of a shopping center have to do with enticing a tenant in? A. By putting together a variety of tenants we try to attract people to our center—pull, attract. The **[901]** two words are synonymous.

Q. So that if a customer came there to drop off his cleaning, by seeing one of the tenants, which might be a hardware store, he might impulsively go buy some hardware just because he was there when he parked his car. Is that correct? A. That's correct.

Q. Now, you've described, I presume in the description of the shopping center, which you've now just described, what you described as your cup of tea as a medium size shopping center. A. That's right.

Q. You've also described that you have developed shopping centers as small as 88,000 square feet. Now, what is 88,000 square feet? A. Well, that——

Q. Does that include the parking lot, or is that just stores? A. No. That's the store area, the retail area of the stores themselves.

Q. Now, if you were developing an 88,000 square foot shopping center, are there any tenants that you must have before you would consider spending your money to buy the land?

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[904] Q. In your experience as a real estate developer are you familiar with the term which might be referred to as a normal municipal business district? Is that a term—Is there such a term used by a real estate developer, to the best of your knowledge?

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[906] A. I'm not familiar with that term in the normal course of my business, no, sir.

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[908] Q. All right. Now, are you familiar with this: Are you familiar with the term the functional equivalent of a normal municipal business district?

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[910] A. I just can't answer it. I'm not familiar with that term, nor, as to the best of my knowledge, is it used in my profession as I practice it.

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Q. Are you familiar with the term privately owned suburban shopping center? A. Yes, sir.

Q. And is this what you've been describing in the last few minutes as what you are in the business of putting together? A. Yes. As distinguished from, say owning downtown properties.

[911] Q. I now hand you what's been marked as General Counsel's Exhibit No. 4.

(Document handed to witness.)

(Document handed to Trial Examiner.)

By Mr. Mattern

Q. And I will allow you to familiarize yourself with that. I will point out that this is 38th Street that runs across the top, Lafayette Road; you might note that Lafayette Square is in this area. I'll generally state that this is the Central Hardware. A. I'm familiar with this area of Indianapolis, yes, sir.

Q. Mr. Eskenazi, in your experience as a real estate developer do you have an opinion as to whether or not the area that appears on General Counsel's Exhibit 4 is a privately owned suburban shopping center? Do you have an opinion? A. Yes, sir.

Q. What is that opinion? A. In my opinion this is a free-standing store, and it would not be within the realm of a shopping center as I practice the real estate developer profession and as I understand it.

Q. Would it be even a little shopping center? A. It's a one store. It's a single, free-standing **[912]** store. That's all it is. It doesn't have the characteristics of a shopping center, as I understand it and as I practice the profession.

Q. Does the fact that Carpet Fashions and the Morris Plan are close to it have any bearing on whether or not it's a privately owned suburban shopping center? A. Not in my opinion, sir.

Q. Why? A. Because it doesn't have the characteristics of a shopping center, which is a group of stores all on one parcel of land, owned by a single owner, working together to bring customers to that parking lot. It doesn't have the grocery, the drug, shoes, et cetera, et cetera, et cetera, which we find we need to put together a shopping center.

Q. Now, assuming while you're observing the same exhibit, assuming that directly north of the Central Hardware Store, across 38th Street, there is a small cluster of, I believe it's a small bank, and an eating establishment or two, and a small cleaners, and assuming that at some times during the day as many as 1,300 cars per hour are moving in a westerly direction on 38th Street, would you say that the fact that—in your opinion the fact that those are over across 38th Street would have any bearing on whether or not this cluster you've just described in the Central Hardware **[913]** group would now be termed a privately owned suburban shopping center? A. I know your time is valuable, I don't want to belabor the point, but as I told you in my opinion this is a free-standing store, and the fact that there is traffic across the street won't make this a shopping center. In my opinion it lacks the characteristics which make up a shopping center, as I understand.

Q. Further assuming then that approximately a half mile to the north on Lafayette Road, and on the east side of Lafayette Road is a shopping center known as Lafayette Square. Does that information change your opinion as to whether or not the areas shown on General Counsel's Exhibit 4 might then be a privately owned suburban shopping center? A. It does not.

Q. Assuming that directly across Lafayette Road from what is shown on General Counsel's Exhibit 4 from the Morris Plan there is a service station sitting on the corner. In your opinion does that now possibly change what is shown within the yellow, on General Counsel's Exhibit 4, does that make that into a privately owned suburban shopping center? A. In my opinion it does not.

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[915] Q. I now hand you what has been marked as General Counsel's Exhibit 4—5—I'm sorry—General Counsel's Exhibit 5, and ask you, and suggest you familiarize yourself with it. I briefly point out that this is—the area outlined in yellow is the Central Hardware Store, known as the East Store over on Shadeland Boulevard—Avenue.

I'll ask you in your opinion as a developer of shopping centers—

First of all, are you familiar with that store and surrounding area? A. Yes, sir.

Q. I'll ask you in your opinion as a developer of suburban shopping centers if this to you constitutes a privately owned suburban shopping center? A. It's not a shopping center in my opinion.

Q. Why isn't it? A. It's a free-standing store.

Q. Doesn't the fact that the car wash is there change your opinion? A. Not in my opinion, no, sir.

Q. Doesn't the fact that the Al Harding office building is there change your opinion? A. Not in my opinion, sir.

Q. Doesn't the fact that a truck stop over in the far left; that is shaded in in pink color, which is a **[916]** Blue & White Truck Stop, does that change your opinion that this is—this might be a privately owned suburban shopping center? A. No, sir.

Q. Let me ask you this. Are you familiar with what's on the west side of Shadeland Avenue?

Trial Examiner: Let me call the witness' attention to the fact that north is not really where you think it is from looking at it. The arrow is on the right-hand side, so you have to turn it around so that——

By Mr. Mattern

Q. Are you familiar with what's on the east side of Shadeland Avenue directly across Shadeland from Central Hardware? A. I've been by it many times; I'm vaguely familiar. If you'd like to refresh my memory by telling me what's there, I'll be happy——

Q. There's a—Mr. Mercer described there was a White Castle. Now, the fact that there's a White Castle across the street from Central Hardware does that turn Central Hardware into a privately owned suburban shopping center?

Trial Examiner: A White Castle restaurant.

By Mr. Mattern

Q. A White Castle restaurant.

[917] Trial Examiner: A White Castle eating place. Is that right?

Mr. Mattern: Yes, sir.

A. No, sir, it does not.

By Mr. Mattern

Q. Assuming accumulatively with the White Castle that in a separate building, with a separate parking lot there is a cleaners over there.

Does that—Would that then change your mind as to whether or not Central Hardware might be a privately owned suburban shopping center? A. No, sir, it does not.

Q. Accumulately add a small bank over there.

Does that change your opinion? A. No, sir.

Q. Accumulatively add a Bonanza steak house with a separate parking lot.

Does that change your opinion? A. No, sir.

Q. Accumulatively add to this list we've already gone through a pizza spot where they serve pizza.

Does that change your opinion? A. No, sir.

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[919] **Cross-Examination**

By Mr. Fogerty

Q. Mr. Witness, you testified, did you not, that in order for a group of stores in your opinion to be called a shopping center you have to have a grocery store. Is that not correct? A. You asked me what a shopping center consisted of.

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[921] Q. It's because you have to assure the tenants of your shopping center that there will be a good number of customers continually coming into this shopping center that you feel that there's a need for a grocery store. Is that not correct? A. Well, it helps. But also I have to assure the tenants, and I try and assure them that we're going to have a good tenant mix, because——

Q. Precisely. This is all based, is it not, on business considerations? A. I'd say yes, sir.

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[922] **Further Cross-Examination**

By Mr. Karmel

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[929] Q. Assume a hypothetical situation, sir. A shopping center as large as Old Orchard,—And you've seen it, have you not? A. Yes, sir.

Q. ——with Marshall Field as a tenant. A. Yes, sir.

[930] Q. With Montgomery Ward as a tenant. A. Yes, sir.

Q. With Saks Fifth Avenue as a tenant. A. Yes, sir.

Q. With approximately 50 other principal retailers as tenants. A. Yes, sir.

Q. A professional building of approximately 15 stories height. A. Yes, sir.

Q. A Walgreen Drug Store. A. Yes, sir.

Q. And assuming in my hypothetical situation that all of this is surrounded by a common parking lot identified by a common name, but lacks a grocery store.

Would in your opinion such a complex of stores and buildings be a shopping center? A. Yes, sir.

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[933] Q. Isn't it possible to build a, or to have a complex of retail operations which give the appearance of a shopping center, as you understand that term to be, without having common ownership of all of the property? A. Absolutely.

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Q. I believe that you used the phrase under one roof in your direct testimony, all under one roof. A. Normally, all under one roof.

[934] Q. Yes. Do you mean, sir, by that that it has to be one structure? A. Well, the word structure could be misleading. It's one group of buildings usually attached in some manner, like a closed mall. It could be detached, like an open mall. It could be a strip variety, which is 10, 15 stores all with one common canopy. If your question is does it have to be one complete structure to qualify as a shopping center, obviously—Old Orchard isn't, so obviously that answer is no.

Q. Well, many, many of the larger shopping centers, for example, are multiple structure, are they not? A. The large malls normally, the biggest part of it, are under one roof. For instance, the one we're building that 750,000 square feet, all are under one roof, the mall area, the whole area. However, some of the tenants have what we call a TVA, which is a free-standing entire store which has a separation between the mall area and the store itself.

[936] Q. Now, have you not seen single-structure buildings with four or five on, or possibly three unrelated retail operations occupying the building, such as a drug store, grocery store, and a pizza parlor under one roof, if [937] you will, with off-street parking? A. Yes, sir.

Q. Yes, sir. But you would not consider that a shopping center, would you? A. No, sir.

Q. Even though it may have hypothetically common ownership and common parking and a common structure. A. Yes, sir.

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[938] **GEORGE REED,**

a witness called by and on behalf of the Respondent, being first duly sworn, was examined, and testified as follows:

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Direct Examination

By Mr. Mattern

Q. What's your occupation, Mr. Reed? A. I am Director of Stores, and also a Vice-President of Central Hardware Company.

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[948] Q. What do you as management of Central Hardware feel that these criteria are that are necessary for a successful Central Hardware operation?

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A. That the building be the approximate size of a minimum of 50,000 square feet on new acquisitions to 70,000 square feet, and one that encompasses all of our stores and that is a free-standing unit.

By Mr. Mattern

Q. What do you mean by free-standing unit? A. One in which—one that stands by itself, that is not adjacent to, or contiguous to, or depends upon traffic that is pulled by any other establishment.

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[949] Q. Do you know who the lessor, who owns the land is that Central Hardware West—— A. Mr. Edmond Ansin.

Q. Does he also own the land that is occupied by the Morris Plan and Fashion Square? A. No, he does not.

Q. Do you know who owns those pieces of property? A. Mr. Byerley.

Q. Drawing your attention to the Central Hardware East, do you know who owns the land that you lease for that? A. Yes.

Q. Who owns that? A. Mr. Edmond Ansin[illegible]

Q. Do you know [illegible]o owns the car wash land? A. Mr. Albert Harding.

Q. Is that the same Albert Harding that owns the Al Harding Construction Building? A. That is right.

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[961] A. (Continued) Mr. Halcomb also came to myself in the West Store and told me about his feeling concerning the slashing of the tires on his car.

Trial Examiner: And these occurred—the tires were slashed on the parking lot?

The Witness: On the parking lot, yes, sir.

By Mr. Mattern

Q. Now, these employees who came to you and discussed these matters, did any of them threaten to quit? A. Yes, they did.

[962] Q. Very many? A. More than a few. Now, very many—yes, I would say very many.

Q. Did any of them ask you for protection while they were on the parking lot?

Mr. Karmel: Object.

Trial Examiner: Mr. Mattern, I want to caution you about leading the witness. This is perhaps for you a critical area, for the whole case. I would prefer the witness testify on this.

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[965] Q. I hand you what's been marked as Government's Exhibit 3 and ask you if this is a reproduction of that letter?

(Document handed to witness.)

A. That is correct.

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Trial Examiner: Now, this letter is signed by Cohen——

The Witness: Yes, sir.

Trial Examiner: ——but you prepared it. Is that correct?

[966] The Witness: That is correct, sir.

Trial Examiner: Okay.

You may proceed.

By Mr. Mattern

Q. And I believe the testimony was that you sent a package of these letters to Max Hagerman with instructions to put them on all the time cards. A. That is correct.

Q. Did you yourself do anything additional to preparing and sending that letter? A. I called Mr. Hagerman and informed him——

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A. (Continued) ——that the letters were coming, instructed him to post the letter on the time cards of our employees.

I also instructed him to keep off of our lots those men who we knew had harassed—had been harassing our employees.

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[977] Q. What, if anything, did he say? A. He said, "Mr. Reed, I want to call to your attention that I received a

union authorization card from Mrs. Ragle downstairs while I was working."

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[978] Q. What, if anything, did you say? A. I said, "Larry, are you familiar with the no solicitation rule?"

Q. And what, if anything, did he say? A. And he said, "Yes, Mr. Reed, I am familiar with it, and that's why I am up here."

Q. What was said next by anybody? A. Well, I pointed out to Larry, I said, "You do appreciate the fact that this could be a very serious matter since, as you described it, it is a violation."

He said, "Yes, Mr. Reed, I do understand that."

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[980] Q. After Larry had—you made this last statement to Larry about "This may be a serious matter", I believe you testified, who said what next? A. At some point in time during this conversation after realizing the implications and the seriousness of the possible consequences, I got up, excused myself briefly, and asked Mr. Hagerman to come in and sit in on the meeting.

[981] Trial Examiner: All right. Then what happened?

A. (Continued) With Mr. Stuck, I explained to him that naturally I would have to review with Mrs. Ragle and get her side of the story, and I would get back to him in the next several days.

And with that Mr. Stuck—I excused him, I thanked him for coming up, and he left the office.

By Mr. Mattern

Q. Did you talk to him at a later date? A. Not the same—Yes, I did, but not that same [982] day.

Q. I say at a later date. A. Yes, I did.

Q. Where did you speak to him on that occasion? A. In my office.

Q. In the same office? A. I'm sorry—Mr. Hagerman's office.

Q. Was the door open or closed? A. It was open.

Q. Did it remain open or did someone close it during the conference? A. I'm sure it was open.

Q. Who was present at that time? A. Mr. Hagerman and Mr. Stuck—Struck—Stuck.

Q. Anyone else? A. At one—during part of the meeting Mrs. Ragle was also in attendance.

Q. Did you—Did Larry Stuck come in your office or did you request that he come to your office? A. I requested that he came—I requested him to come up.

Q. What took place at that meeting? A. I covered with him Mrs. Ragle's explanation of how the union authorization card had been given to Mr. Stuck.

[983] Q. What, if anything, did he say? A. He denied the method which Mrs. Ragle had given to me for giving the card to him, and suggested that I attempt to verify her explanation.

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Q. What took place then? A. I proceeded to call Larry Stuck's mother-in-law.

Q. Why did you do that? A. Because Mrs. Ragle—in asking for her explanation, had stated that she gave the union authorization card to Larry at his mother-in-law's home.

Q. Was it at your instance you called Larry Stuck's mother-in-law, or did someone suggest it to you, or how did it come about? A. I had to ask Larry the phone number of his mother-in-law. I felt it necessary to call the mother-in-law.

Q. Was it your idea to call the mother-in-law? A. I frankly don't remember.

[984] Q. And in their presence did you talk to the mother-in-law? A. Yes; in the presence of Larry and Mr. Hagerman.

Q. And what did the mother-in-law say?

Mr. Karmel: Objection. Hearsay.

Trial Examiner: Overruled.

A. Mrs.—I've even forgotten her name. But Larry Stuck's mother-in-law told me that Marilyn Ragle could not have given the card to Larry Stuck in her home since although she was a good friend of Mrs. Ragle's, she had not seen her in six months.

By Mr. Mattern

Q. Was that the end of your conversation, then, with Larry Stuck, or did you keep him there longer? A. At that point in time, and I am fuzzy on this, after all it did happen seven or eight months ago—I believe I called Marilyn in at that time with Larry Stuck in the office, and explained to Marilyn that I had talked to Larry's mother-in-law, and the mother-in-law had stated that she had not seen Marilyn in six months.

At which point Marilyn said, "Well, Mr. Reed, I didn't say that I gave it to Larry in the mother-in-law's home; I gave it to him out in front."

Q. What, if anything, did you say to that? A. I said, "Now, Marilyn, you did explain to me [985] that it was in the home the other day, because I asked you specifically that. Now, you say that it was out in front."

Q. What did she say to that? A. At that point in time she said, "Well, actually, Mr. Reed, I gave it to Larry on the parking lot in the store."

Q. What did you say to that, if anything? A. I then pointed out to both of them that I had not to my own satisfaction been able to prove or disprove a thing; that Marilyn herself essentially had not, according to her explanation of it, violated our NO SOLICITATION rule, and it was merely—both of the explanations—neither of the explanations agreed, so therefore at that point in time I asked to think about it, and I did find it—I said, "Since this serious a matter has been brought to my attention I have to get to the bottom of it."

To my best recollection I then excused both, and later on that day, or perhaps a day later, I asked Marilyn to come back in to discuss it further with me.

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[986] Q. Now, what happened? A. Mr. Hagerman was also in attendance at this time, and I explained to Marilyn that she had in fact told me that she had given the card to Larry in three separate locations—No. 1—the mother's home; No. 2—in front of the home; and No. 3—on the parking lot.

I said, "Now, Marilyn, those are all inconsistencies. Where did you solicit Larry Stuck to join the union?" [987] And she said, "Mr. Reed, I did not solicit Larry Stuck on company time in the store." She said, "I solicited other people on company time in the store, but not Larry Stuck."

At which time I said, "Then, Marilyn, you do admit soliciting on company time in the store?"

And she said, "Yes."

I said, "Then, Marilyn, you give me no alternative but to give you a suspension of three days."

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[988] Q. Now, returning your attention to the physical layout of the East and West Stores here in Indianapolis.

In your experience as having dealt with shopping centers, free-standing units, downtown business districts, how would you characterize the store and surrounding property at the West Store? A. The Central Hardware property is approximately five acres with a 66,000 square foot retail store, located thereon, with approximately 350 car parking, that is at the time of signing our lease was adjoined to the left of the front door. Frankly I'm confused at the moment as to [989] my directions.

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[993] **Further Cross-Examination**

By Mr. Karmel

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[996] Q. All right. Three or four weeks later you had a conversation with one of these individuals? A. That is correct.

Q. And who is that? A. Mr. Stuck.

Q. Mr. Stuck? A. That is right.

Q. And how long did that conversation take? A. Two or three minutes, if that long.

Q. Might I ask you—this may be repetitious but if you'll bear with me—might I ask you what was that conversation about? A. Yes, you may.

Q. Please tell me, then. A. The conversation was merely one of information, to inform Mr. Stuck that Mrs. Ragle—the disciplinary action was in no way connected with his testimony to me, that I was unable to reach a conclusion on his testimony and hers.

Q. So this conversation occurred after the disciplinary action was taken against Mrs. Ragle. A. That is correct.

* * * * * * *

[1015] Q. You know for a fact that each time you saw a conversation between these people you had identified as union representatives and your employees that it dealt with organizing, you know that for a fact. A. Not on all.

Q. Well—— A. You asked me do you know——

Q. I asked you did you know on all, and—— A. My answer to that is no.

Q. All right. You also have answered, have you not, sir, at no time did you personally hear any of the conversations? A. I have testified that, yes; I have.

Q. All right. So that any knowledge of what may have transpired between these union representatives or organizers, whatever term you want to use, and your employees comes to you on a second-hand basis. Isn't that correct, sir? [1016] A. You mean from the employee, Mr. Karmel?

Q. From the employee. A. Yes.

Q. From some—— A. Yes.

Q. From some second-hand source. A. Yes.

Q. Including the employee. A. Yes.

* * * * * * *

[1017] Q. As I recall your testimony, sir, Mr. Halcomb did not identify the culprit who did the tire slashing, did he? A. No, he did not.

Q. He told you he had a feeling about it. Isn't that what it was? A. That is correct.

Q. Did you have a feeling about it? A. No, sir, I did not.

Q. You didn't necessarily believe that it was done by the union representatives, did you, sir? A. I had no way of knowing who did it.

* * * * * * *

[1018] Q. Did you believe that female employees were in danger of their personal safety if they were confronted by [1019] a union organizer on your parking lot, sir? A. No, I did not feel that their personal safety was involved.

Q. All right. Can you tell me, sir, why you spent so much time trying to get to the bottom of the matter, and I believe I'm using your words there, involving this card incident with Marilyn Ragle and Mr. Stuck? A. Only because it violated a company rule.

* * * * * * *

[1030] Further Recross-Examination

By Mr. Karmel

[1031] Q. Do you have any written complaints from employees at the East or West Stores other than those which are in evidence at this time, sir? A. No, we do not.

* * * * * * *

GENERAL COUNSEL'S EXHIBIT 2

AFFIDAVIT

State of Indiana
County of Marion

Comes now Max Hagerman, and being first duly sworn, and makes the following statement:

1. That his name is Max Hagerman and he resides at 8088 Hoover Lane, Indianapolis, Indiana; that he was employed by Central Hardware in St. Louis on June 1, 1963, and was transferred to Indianapolis when the two stores were opened there earlier this year; that he is general manager over both stores and is the store manager of the West store located at 4507 West 38th Street.

2. That he is familiar with the management policies of Central Hardware and knows them to be contained in a manual entitled "Policy Manual, Central Hardware Company"; that he knows that each store manager possesses an identical manual to be used in making decisions based on Company policy; that the manual is for the use of the manager and is not furnished to employees although from time to time, certain of the policies in the manual are brought to the attention of the employees, either by posting a notice of a particular policy, reading an individual employee the policy, or calling a meeting of employees; that some of the subjects encompassed in the Policy Man-

ual include, Absences, Alcohol, Coffee Breaks, Garnishments, Holidays, Jury Duty, Loans, Maternity Leave, Employee Purchases, Solicitations, Smoking, Training, Weddings.

3. That one of the policies set forth in the Manual states: "There shall be no solicitations for any purpose whatsoever, without prior management approval. This includes raffle tickets, contributions, union solicitations, etc. Violation of this policy will result in severe disciplinary action"; that he knows that many groups and individuals request and attempt solicitations, bake sales, candy sales, etc. due to the traffic generated by the supermarket nature of the operation.

4. That the basic concept of a Central Hardware store is a self-service operation selling many small articles that a customer takes to a check-out lane near the store entrance; that such an operation is extremely susceptible to shoplifting and check-out errors; that unless the store employees exert constant vigilance while on the job, serious economic consequences are certain; that if solicitations of working employees is allowed, operations will be severely hampered since part of the operation involves personal counseling of customers, concerning their hardware needs, by employees known and advertised as "the expert in the orange coat."

5. That prior to June 13, 1968, among other solicitations attempted in the Indianapolis stores, certain representatives of the Retail Clerks Union Local 725 were soliciting store employees at their duty stations during working hours, soliciting them to sign union representation cards; that in order to avoid the economic hazards of having working employees distracted by nonbusiness sources, Mr. George Reed called a meeting of all store employees in the West store on June 13, 1968; that at that meeting, attended by Marilyn Ragle, Mr. Reed read the speech which is attached hereto and made a part hereof; four separate

meetings were held so that all Indianapolis employees could attend, and the same speech was read at each meeting.

6. That on or about July 8, 1968, a West store employee, Larry Stuck, reported to store management that Marilyn Ragle had asked him to sign a union authorization card; that at the time she solicited him it was during working time when neither of them were on break or lunch time.

7. That when questioned on this matter by George Reed and Max Hagerman, Marilyn Ragle admitted that she had been at the June 13 meeting, heard George Reed give his speech and personally knew of the rule against solicitations; that she admitted making the solicitation but said she had made it at the home of Larry Stuck's mother-in-law and, if called, the mother-in-law would substantiate the story; that George Reed, then and there, called Larry Stuck's mother-in-law by telephone, told her what Marilyn Ragle had said and requested substantiation; that he was told that the mother-in-law knew of no solicitation in her home, nor had she seen Marilyn Ragle for eight or nine months; that Marilyn Ragle continued to deny she had solicited Larry Stuck, but did admit she had solicited other employees in the store during working hours; that she was thereupon given a disciplinary three-day layoff.

8. That the policy barring solicitations is enforced in all Central Hardware stores against employees making solicitations of any kind while on the job; that the policy is not enforced at any other time, such as during coffee breaks, lunch hours, or after work, so long as the person solicited is not, himself, working at his duty station; that all outsiders are barred from solicitations of any kind on the premises without prior management approval.

Max Hagerman

October 3, 1968.

On this 8th day of October, 1968, before me, a Notary Public, appeared Max Hagerman and signed the foregoing in my presence.

Donna Sue Pizzarro
Notary Public

My commission expires 4-8-69.

June 13

Several weeks have past since I have had the pleasure of addressing many of you. For others this is the first time that circumstances have provided the opportunity of speaking to you. Together we have now completed the first complete week of business here in Indianapolis; and on the part of your entire management organization, I wish to extend our heartiest congratulations for a job extremely well done; and to encourage you for continued success during the weeks and months ahead. During this time it will take the combined efforts of all of us to achieve the distinction of being "The Store" for hard goods purchasing in the City of Indianapolis.

We are well aware that in addition to the stress of being involved in the opening of our beautiful new stores, that outside interests, namely the Retail Clerks Union, are exerting extreme pressures in an organizational attempt on our employees. A number of you have come to us pointing out that in your opinions undue pressure is being exerted by the members of the organizing team of the Retail Local. At this point I wish to state that regardless of whether our employees choose to become a Union store or not, no employee will lose their job or will have any disciplinary action taken if they refuse to sign the Union authorization card. You are under no obligation to sign the card, or to vote for the Union if an election should happen to be called; and I certainly wish to go on record that your management certainly abhors any harassment of its employees by any individuals or organizations. Signing a union authorization card merely to "get rid" of a union organizer is like playing with fire—you are almost sure to get burned. If you don't want to sign, just say "No, thanks" or "I don't really believe that we need a union", but let me say again—Don't sign a card merely to get someone off your back. Once a card is signed it cannot be revoked and regardless of what you say or do later it will be counted in determining the percentage that the union represents. If you think that you can revoke the authorization, just try to get your card back from them.

Central Hardware Company has a long standing policy regarding solicitations on company premises. This policy is quite broad and applies to any solicitations for raffle tickets, contributions to charitable organizations, union solicitations, etc., and states that "no solicitation may be made on company premises for any purpose without prior management approval". Violations of the no solicitation policy will result in disciplinary action, including the possibility of dismissal, therefore, we want to make the company's position on this quite clear at this time, and we urge that if you have any solicitations to be made on the company premises that you submit the matter to your supervisor or manager for approval before proceeding. As mentioned before, this includes raffle tickets, charities, or solicitations on behalf of unions.

Several weeks ago I covered with many of you the Company's position which namely is as follows:

> "Central Hardware recognizes the rights of our personnel to determine for themselves if they would like to organize; however, in no way is the current organizational drive being put on by the Retail Clerks Union being sponsored by your Company. We sincerely believe that management and employees in Indianapolis Central Hardware stores can work together for the

best interest of all, without the necessity of any outsiders."

I have had the opportunity in reviewing some of the propaganda literature that has been distributed among some of you by the members of the organizational team of the local Retail Clerks Union. Frankly, and in my honest opinion, your Webster's dictionary states that **Courtship** is: "the process, or time of wooing". As we all know, some of our young men today in the "wooing" of their girlfriends, will make promises, promises, promises. When they have achieved whatever goal that they set out to do, for some reason or another the promises are soon forgotten. Each of you are currently being "Courted" by the local chapter of the Retail Clerks Union.

Conversely, Webster's dictionary states that a **Marriage** is: "the state of being legally wedded; the wedding ceremony; or any close union". Your Company sincerely feels that when you come to work for Central Hardware, an extremely close bond was made between us. A bond that in the months and years to come can grow closer together by mutually sharing both problems and benefits. As many of you already know, the salaries and benefits under which you were hired, already exceed that which is currently being offered to employees in comparable retail establishments in Indianapolis. As we grow in Indianapolis, those of you here today who will help make this growth possible, will naturally share in the benefits of our combined efforts.

In reviewing the most recent propaganda from the Retail Union, I cannot help but quote the following excerpt, which reads as follows: "As the employee of Central Hardware you are entitled to the same benefits of the Retail Clerks Union, Local 725." As a partner with you in the "marriage" referred to before, I can only in all honesty say your Company feels you are entitled to more benefits than the Retail Clerks Union, Local 725 has been successful in obtaining from comparable retail stores in Indianapolis. I have here with me today the current contract from your TOPS retail stores in town (benefit by benefit). From the above you can see that the propaganda that the Retail Clerks Union has been giving you is not borne out in fact. Bear in mind that these promises that are being given you during their "courtin" of each and everyone of you would have to be negotiated over a bargaining table. If they would be successful in leading you down the garden path, then quite frankly all bets are off and we start from scratch.

In conclusion, let me say again that the decision to organize rests with each and everyone of you on an individual basis. Your Company will not, however, tolerate intimidation or threats to **any** of our employees, by **any** organization. The "close bond" referred to before makes it impossible for us to turn our backs on our employees for whatever the reason may be. This same "bond" makes it pertinent to our future success that any problems experienced by any of you in the day to day execution of your duties becomes our problem. Your success in your job can only result in our success, and secure the future in Indianapolis both for you as individuals and Central Hardware as a Company. We are a small Company, made up of a family of individuals. You people happen to be a part of our Indianapolis family; and I sincerely hope that in the future we will not need any outside "marriage counselor" such as a labor union to solve our mutual problems.

Thank you

George W. Reed

Be introduced by Max.

GENERAL COUNSEL'S EXHIBIT 3

Central Hardware Co.
Main Office: 4200 North Union Blvd.
St. Louis, Missouri 63115

July 15, 1968

All Our Indianapolis People

Dear Fellow Employee:

I have just finished studying the petition that was given by our Indianapolis People to George Reed enlisting our help in ending the coercion and harassment to which they are being exposed.

To these people, first, I must express my deepest appreciation for the trust and confidence in your Company you have expressed by stating you are not interested in joining the union. This expression of loyalty is very gratifying and is just another bit of proof of the wisdom of our move to Indianapolis.

One step that we are taking immediately, like today, is to instruct our Indianapolis management to keep all union organizers off our premises, both inside and outside. This should offer some prompt relief.

In addition, we have asked our lawyers to advise what we can legally do to prevent such dastardly actions. We expect some recommendations shortly and you may rest assured your Company will do all within its legal power to back you up and prevent any further harassments.

Sincerely
/s/ Stanley
Stanley M. Cohen
President

SMC/ss

Exhibits on pgs. 238-242
are too large to be filmed

GENERAL COUNSEL'S EXHIBIT 10

Marilyn Ragle

NOTICE OF DISCIPLINARY ACTION

This is to record that the above mentioned employee has violated the Company's "no solicitation" rule; and is hereby given a disciplinary layoff of three (3) days, and a warning that future violation of the rule will result in immediate discharge without further notice.

Dated the 8th day of July, 1968

Central Hardware Company, By: George W. Reed

Mae Ancerina
(witness)

Receipt of a copy of the foregoing notice is hereby acknowledged.

Marilyn Ragle
(employee)

GENERAL COUNSEL'S EXHIBIT 12

MARION COUNTY

Route S.R. # 100 **INDIANA** (Southbound) **Station** # 121

AUTOMATIC TRAFFIC RECORDER RECORD

Prepared by State-Wide Highway Planning Survey

Week Beginning 4-23-67 **R.C.#** 55

Day	Sun.	Mon.	Tues.	Wed.	Thur.	Fri.	Sat.	Total
Date				4-26	4-27	4-28	-	
Weather				Nor.	Nor.	Nor.		
Hour				A. M.				
12 - 1					222	293		
1 - 2					174	186		
2 - 3					148	204		
3 - 4					144	130		
4 - 5					113	133		
5 - 6					434	439		
6 - 7					1542	1520		
7 - 8					1671	1684		
8 - 9					914	1009		
9 -10					905	837		
10 -11			Start		926	975	End	
11 -12			11 AM	903	953		11 AM	
				P. M.				
12 - 1				1003	1037			
1 - 2				972	940			
2 - 3				1289	1297			
3 - 4				963	1041			
4 - 5				1134	1116			
5 - 6				1215	1214			
6 - 7				1029	1148			
7 - 8				901	1075			
8 - 9				765	924			
9 -10				664	707			
10 -11				630	622			
11 -12				552	564			
Total				12020	19831	7407		
% Aver. Wk. Day								

Average daily traffic - vehicles.

Remarks - Located on S.R. # 100 in Marion County - 200' South of 38th Street.

Counter Chained to: T.P. # 3702 on west side of Street,

Average Weekday 19629

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GENERAL COUNSEL'S EXHIBIT 13

MARION COUNTY

Route S.R. # 100 INDIANA (Northbound) Station # 121

AUTOMATIC TRAFFIC RECORDER RECORD

Prepared by State-Wide Highway Planning Survey

Week Beginning 4-23-67 R.C.# 48

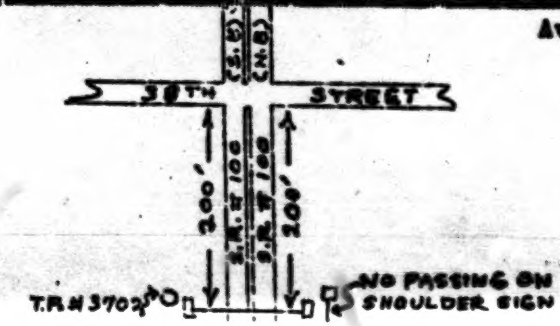
Day	Sun.	Mon.	Tues.	Wed.	Thur.	Fri.	Sat.	Total
Date				4-26	4-27	4-28		
Weather				Nor.	Nor.	Nor.		
Hour				A. M.				
12 - 1					646	591		
1 - 2					201	237		
2 - 3					178	205		
3 - 4					135	173		
4 - 5					159	175		
5 - 6					242	258		
6 - 7					558	612		
7 - 8					1151	1208		
8 - 9					1016	953		
9 -10					736	732		
10 -11			Start		861	1041	End	
11 -12			11 AM	972	1027		11 AM	
				P. M.				
12 - 1				923	1052			
1 - 2				891	869			
2 - 3				912	970			
3 - 4				1465	1496			
4 - 5				1588	1713			
5 - 6				1535	1513			
6 - 7				1100	1247			
7 - 8				1029	1120			
8 - 9				891	1055			
9 -10				750	853			
10 -11				542	592			
11 -12				634	609			
Total				13235	19999	6185		
% Aver. Wk. Day								

Average daily traffic - vehicles.

Remarks - Located on S.R. # 100 in Marion County - 200' South of 38th Street.

Counter Chained to: "No Passing on Shoulder" sign on east side of Street.

Average Weekday 19710



13

GENERAL COUNSEL'S EXHIBIT 14

Marion Co.

Route S-430 **INDIANA** **Station** #994

AUTOMATIC TRAFFIC RECORDER RECORD

Prepared by State-Wide Highway Planning Survey

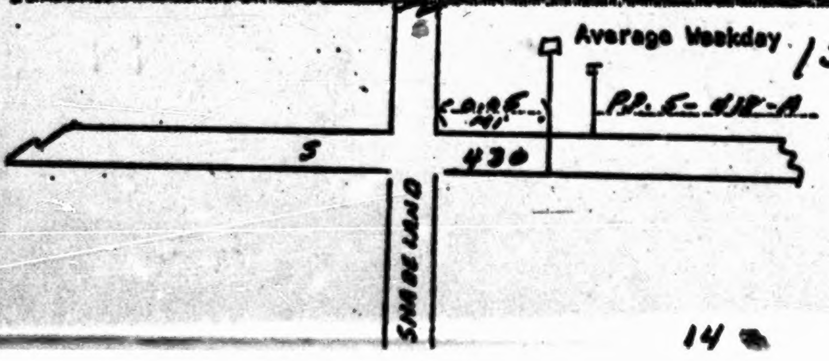
Week Beginning 28 Aug 67 R.C.# 68

Day	Sun.	Mon.	Tues.	Wed.	Thur.	Fri.	Sat.	Total
Date	9/3	9/4	9/5	8/30	8/31	9/1	9/2	
Weather		Holi.						
Hour				A. M.				
12 - 1			166			293		
1 - 2			77			155		
2 - 3			97			92		
3 - 4			25			44		
4 - 5			31			57		
5 - 6			150			150		
6 - 7			704			641		
7 - 8			1041			973		
8 - 9			807	END	START	761		
9 - 10					9AM 517	570		
10 - 11					579	665		
11 - 12					704	742		
				P. M.				
12 - 1					795	815		
1 - 2					754	832		
2 - 3				15	775	854		
3 - 4				3	921	992		
4 - 5				6	1077	1146		
5 - 6				7	1161	1252		
6 - 7				6	978	1056		
7 - 8				9	981	1038		
8 - 9					840	895		
9 - 10					640	662		
10 - 11					480	533		
11 - 12					403	472		
Total			3048		11605	15712		
% Aver. Wk. Day								

Average daily traffic - vehicles.

Remarks - Located on S-430 0.05 MI EAST OF SHADELAND

Counter Chained to: RP. S-418-A ON NORTH SIDE OF RD.



Average Weekday 15182 ✓

GENERAL COUNSEL'S EXHIBIT 15

BUREAU OF TRAFFIC ENGINEERING CITY OF INDIANAPOLIS, INDIANA
AUTOMATIC TRAFFIC RECORDER SUMMARY

LOCATION 38th West of Lafayette Road
DIRECTION West DATE - FROM 6-20-68 TO 6-26-68
MACHINE # 12 STATION # ____ RECORDED BY Giles DATE 6-27-68

DAY	MON	TUES	WED	THUR	FRI	SAT	SUN			TOTAL
DATE										
WEATHER	6-24	6-25	6-26	6-20	6-21	6-22	6-23			
HOUR				A. M.						
12 - 1	216	217	255		304	352	*507			
1 - 2	147	177	179		225	392	456			
2 - 3	53	78	83		100	224	247			
3 - 4	20	51	55		79	123	162			
4 - 5	15	28	25		39	60	98			
5 - 6	17	29	30		45	52	46			
6 - 7	138	168	222		127	96	52			
7 - 8	357	317	366		340	166	105			
8 - 9	540	*559	*522		512	249	158			
9 - 10	475	493	458		496	379	126			
10 - 11	450	456	445		461	485	225			
11 - 12	*557	490			*526	*623	474			
A.M. Total	3002	3053	2634		3244	3201	2742			17876
				P. M.						
12 - 1	599	608		610	639	750	597			
1 - 2	646	637		640	682	882	659			
2 - 3	690	606		614	645	876	*664			
3 - 4	578	644		649	692	782	638			
4 - 5	711	787		686	841	861	627			
5 - 6	1057	1044		1049	1091	859	656			
6 - 7	*1131	1030		*1310	*1362	786	574			
7 - 8	707	705		797	901	749	558			
8 - 9	707	709		743	899	662	567			
9 - 10	677	676		794	901	657	566			
10 - 11	592	605		667	702	650	444			
11 - 12	406	375		501	547	*953	351			
P.M. Total	8360	8426		9061	9782	9460	6901			51,983
24 Hr. Total	11,362	11,479			13,026	12661	9643			69,859
A.M. PK.	11-12/557	8-9/559	8-9/522		11-12/526	11-12/623	12-1/507			
P.M. PK.	6-7/1131	5-6/1044		6-7/1310	6-7/1362	11-12/953	2-3/664			

TOT HRS 143 HRLY VOL ____ ADT ____ LANES ____ CAPY ____

BTE 303—Rev. 6-60

R.P.Co.—[illegible]—136

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GENERAL COUNSEL'S EXHIBIT 16

BUREAU OF TRAFFIC ENGINEERING CITY OF INDIANAPOLIS, INDIANA
AUTOMATIC TRAFFIC RECORDER SUMMARY

LOCATION EAST BOUND ON 38TH ST West OF LAFAYETTE Rd.
DIRECTION EAST DATS - FROM 6-20-68 TO 6-26-68
MACHINE # 223 STATION # ______ RECORDED BY SOWASH DATE 6-27-68

DAY	MON	TUES	WED	THUR	FRI	SAT	SUN			TOTAL
DATE										
WEATHER	6-24	6-25	6-26	6-20	6-21	6-22	6-23			
HOUR					A. M.					
12 - 1	231	142	172		247	298	275			
1 - 2	121	89	111		109	218	264			
2 - 3	53	34	51		66	134	183			
3 - 4	24	26	35		41	71	81			
4 - 5	22	32	23		33	38	41			
5 - 6	41	53	52		51	52	27			
6 - 7	194	167	262		121	104	47			
7 - 8	706	624	978		329	241	88			
8 - 9	X1281	X1238	X1112		X1211	383	154			
9 - 10	646	599	542		833	435	247			
10 - 11	548	487	456		584	545	337			
11 - 12	497	486			562	X714	X353			
A.M. Total	4369	3977	3846		4187	3233	2099			21,711
					P. M.					
12 - 1	577	625		584	581	806	519			
1 - 2	639	661		674	658	900	650			
2 - 3	592	634		644	631	860	696			
3 - 4	669	633		628	765	844	647			
4 - 5	757	654		699	821	892	663			
5 - 6	868	659		829	849	919	X741			
6 - 7	X821	X787		X895	896	1030	640			
7 - 8	787	683		825	X914	X1093	738			
8 - 9	668	669		770	875	486	650			
9 - 10	486	566		623	780	666	584			
10 - 11	425	[illegible]		609	603	574	457			
11 - 12	255	238		388	[illegible]	[illegible]	347			
P.M. Total	7424	7332		8068	8012	9949	7332			48,917
24 Hr. Total	11,793	11,309			12,199	13,182	9431			70,628
A.M. PK.	8-9 1281	8-9 1281	8-9 1112		8-9 1211	11-12 714	11-12 353			
P.M. PK.	6-7 821	6-7 787		6-7 895	7-8 914	7-8 1030	5-6 741			

TOT HRS 143 HRLY VOL ______ ADT ______ LANES ______ CAPY ______

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GENERAL COUNSEL'S EXHIBIT 17

BUREAU OF TRAFFIC ENGINEERING CITY OF INDIANAPOLIS, INDIANA
AUTOMATIC TRAFFIC RECORDER SUMMARY

LOCATION South Bound on Lafayette Rd. So. of 38th
DIRECTION South DATS - FROM 6-20-68 TO 6-26-68
MACHINE # 205 STATION # ____ RECORDED BY Sowash DATE 6-27-68

DAY	MON	TUES	WED	THUR	FRI	SAT	SUN			TOTAL
DATE										
WEATHER	6-24	6-25	6-26	6-20	6-21	6-22	6-23			
HOUR					A. M.					
12 - 1	115	95	118		149	188	214			
1 - 2	118	83	117		92	205	240			
2 - 3	26	35	42		56	89	105			
3 - 4	30	34	25		32	51	54			
4 - 5	16	27	19		29	34	25			
5 - 6	20	34	40		30	46	17			
6 - 7	80	104	120		106	68	31			
7 - 8	313	216	357		282	138	46			
8 - 9	X604	X628	X624		X551	207	51			
9 - 10	454	429	399		408	311	59			
10 - 11	364	382	347		388	368	139			
11 - 12	405	405			453	X450	151			
A.M. Total	2545	2572	2203		2576	2145	1134			13,176
					P. M.					
12 - 1	458	477		452	464	568	261			
1 - 2	499	502		304	543	X611	301			
2 - 3	484	X531		525	528	582	327			
3 - 4	475	489		454	523	577	280			
4 - 5	487	502		430	567	574	313			
5 - 6	X567	525		X582	570	559	395			
6 - 7	473	419		492	594	477	[illegible]			
7 - 8	481	445		486	609	430	330			
8 - 9	437	495		487	579	437	272			
9 - 10	455	401		454	591	467	255			
10 - 11	271	299		327	X696	412	187			
11 - 12	157	160		248	304	552	144			
P.M. Total	5211	5239		5421	6567	6287	3344			32,069
24 Hr. Total	7766	7811			9143	8422	4478			45 244
A.M. PK.	8-9 / 604	8-9 / 628	8-9 / 624		8-9 / 551	11-12 / 450	1-2 / 240			
P.M. PK.	5-6 / 567	2-3 / 531		5-6 / 582	10-11 / 695	1-2 / 611	3-4 / 380			

TOT HRS 143 HRLY VOL ______ ADT ______ LANES ______ CAPY ______

BTE 302—Rev. 6-60

R.P.Co.—[illegible]

17

GENERAL COUNSEL'S EXHIBIT 18

BUREAU OF TRAFFIC ENGINEERING CITY OF INDIANAPOLIS, INDIANA

AUTOMATIC TRAFFIC RECORDER SUMMARY

[illegible] So. of 38TH ST

[illegible] • FROM 6-20-68 TO 6-26-68

[illegible] 5 STATION [illegible] RECORDED BY Sawash DATE 6-27-68

	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	SAT	SUN			TOTAL
[illegible]	6-24	6-25	6-26	6-20	6-21	6-22	6-23			
A. M.										
[illegible]	[illegible]	[illegible]	[illegible]		[illegible]	309	201			
[illegible]	[illegible]	[illegible]	[illegible]		[illegible]	160	132			
[illegible]	[illegible]	[illegible]	[illegible]		[illegible]	132	96			
[illegible]	[illegible]	[illegible]	[illegible]		[illegible]	[illegible]	56			
[illegible]	[illegible]	[illegible]	[illegible]		[illegible]	[illegible]	49			
[illegible]	[illegible]	[illegible]	[illegible]		[illegible]	40	20			
[illegible]	[illegible]	[illegible]	[illegible]		[illegible]	50	73			
[illegible]	[illegible]	[illegible]	[illegible]		[illegible]	97	47			
[illegible]	[illegible]	[illegible]	[illegible]		[illegible]	[illegible]	60			
[illegible]	[illegible]	[illegible]	[illegible]		[illegible]	[illegible]	100			
[illegible]	[illegible]	[illegible]	[illegible]		[illegible]	[illegible]	142			
[illegible]	[illegible]	[illegible]			[illegible]	[illegible]	190			
[illegible]	[illegible]	[illegible]	[illegible]		[illegible]	1988	1190			10,832
P. M.										
[illegible]	[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]			
[illegible]	[illegible]	[illegible]		[illegible]	[illegible]	535	331			
[illegible]	[illegible]	[illegible]		[illegible]	[illegible]	570	319			
[illegible]	[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]			
[illegible]	[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	366			
[illegible]	[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	306			
[illegible]	[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]			
[illegible]	[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	302			
[illegible]	[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	336			
[illegible]	[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]			
[illegible]	[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	132			
[illegible]	[illegible]	[illegible]		[illegible]	[illegible]	331	130			
	[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]			32,535
[illegible]	[illegible]	[illegible]	[illegible]		[illegible]	8112	4579			43,367
[illegible]	[illegible]	[illegible]	[illegible]		[illegible]	[illegible]	[illegible]			
[illegible]	[illegible]	[illegible]		[illegible]	[illegible]	[illegible]	[illegible]			

[illegible] VOL. ______ ADT ______ LANES ______ CAPY ______

[illegible] [illegible]

18

GENERAL COUNSEL'S EXHIBIT 19

U. S. populations are from 1960 Census

GENERAL COUNSEL'S EXHIBIT 20

Indiana

●Indianapolis (49), 476258	G-5

GENERAL COUNSEL'S EXHIBIT 21

Radio Stations & Broadcasting Companies

Radio Station W S M J 640W9 Greenfield	462-5511
W A J C Radio Sta	
Lilly Hall Studio 4600 Sunset Av	923-3451
Studio 520W49	923-1212
W A T I Radio 3490 Bluff Rd	787-2211
W B R I Radio Sta 4802E62	255-5484
W F B M Radio 1330 N Meridian	635-9326
W F B M-AM-FM TV 1330 N Meridian	635-9326
W F M S Radio Indianapolis Hawthorne Radio Center 2255 N Hawthorne Ln	359-5511
W G E E-W G E E-FM 4800 E Raymond	359-5591
W I B C Radio Station 2835 N Illinois	924-2661
W I C R-FM 4001 Otterbein Av	787-6301

W I F E AM Radio 1440 N Meridian	637-1375
WIFE FM Radio 1440 N Meridian	637-1375
WIFN-FM US 31 North Franklin Ind	631-7013
W I R E Radio Sta 307 N Penn	635-1541
W J M K Radio Sta 863 Walton Dr Plainfld	839-2366
W N A P Radio Station	
Studio 2835 N Illinois	926-4524
Sales 605 E 38 Apt 3	925-7822
W N A P-FM Radio Sta 2835 N Illinois	924-2661
W T L C Radio Station 1734 Villa Av	784-4471
W X L W 3003 Kesslr Blvd N Dr	925-6494

GENERAL COUNSEL'S EXHIBIT 22

Television Stations & Broadcasting Companies

AVCO Broadcasting Corp 1401 N Meridian	639-2311
Metropolitan Indianapolis Television Association Inc 4200 Northwestern Av	925-5347
W F B M Television Channel 6 1330 N Meridian	635-9326
W I S H TV Channel 8 1950 N Meridian	924-4381
W L W-I TV Chan No. 12 1401 N Meridian	639-2311
W T T V Television 3490 Bluff Rd	787-2211

GENERAL COUNSEL'S EXHIBIT 23

Newspapers

See also Advertising—Newspaper

Charger The 4909 W 15	244-4262
Community Press Inc Expert Job Printing 810 N Range Line Rd Carmel	846-5861
Community Publishers Inc 4402 W Washington	241-3176
Criterion The 124 W Georgia	635-4531
Daily Journal The U S 31 N Franklin Ind	631-1279
East Side Herald Indianapolis Herald Serving the East Side Since 1938 3843 E Wash	356-2487
Economy Printg Co 2514 W Mich	637-6697
Enterprise-West Indpls 1258 Oliver Av	639-6477
Fairchild Publications Inc 3969 Meadows Dr Suite 11	545-0557
Franklin Evening Star 70 N Main Franklin Ind Call Long Distance	Franklin—736-5221
Greenwood News The 332 W Main Greenwd	881-6766
Greenwood Star The Whiteland Ind	535-8271
Harrison Post 4011 N Keystone Av	547-8194
Hendricks County Flyer 535 Center St Rd Plainfld	839-4934

Hoosier Republican The Circle Tower Bldg Rm 217	637-3258
Ind Government News Service 31 E. Georgia Rm 217	783-0117
Ind Herald 2449 Rader	925-2311
Ind Jewish Chronicle 241 E Ohio Rm 504	632-9146
Indiana Jewish Post and Opinion 611 N. Park Av	634-1307
Indpls Commercial Daily Business Newspaper, Public Records 223 E Ohio	636-3303
Indianapolis News	
Main Office 307 N Pennsylvania	633-1240
Home Delivery Service 307 N Pennsylvania	633-9211
Want Ads 307 N Pennsylvania	633-1212
Indianapolis Newspapers Inc 307 N Pennsylvania	633-1240
Indpls Recorder The 518 Ind Av	634-1545
Indpls Star	
Main Office 307 N Pennsylvania	633-1240
Home Delivery Service 307 N Pennsylvania	633-9211
Want Ads 307 N Pennsylvania	633-1212
Jewish Post 611 N Park Av	634-1307
Labor News 2409½ E 38	545-4381
Lawrence Journal 8010 E 46	545-1316
Leader The State Wide Building Trade Newspaper 1345 N Illinois	635-3083

Louisville Courier-Journal 501 Indiana State Teachers Association Bldg	634-1872
Macedonian Tribune A National Bulgarian Language Newspaper 107 S Capital Av Rm 208	635-2157
Messenger The 307 W Main Plainfield	839-6543
New Palestine Press New Palestine Ind	861-4242
If no ans call	862-6880
News Journal The 581 S Range Line Rd Carmel	846-5809
Noblesville Daily Ledger 957 Logan Noblesville	773-1210
North East Topics The 6216 N College Av	253-1641
North Side Topics The 6216 N College Av	253-1641
Northeast Reporter 2603 N Gale	546-5955
Northern Suburbanite 70 E Cedar Zionsville	873-3301
Northwest Press	
Editorial Dept 3652 W 16	638-4223
Display Advertising 3652 W 16	638-3253
Perry Township Weekly 301 Main Beech Grove	784-4357
Plainfield Messenger 307 W. Main Plainfield	839-6545
Pratt Printing Co Inc 225 N New Jersey	632-3497
Republican Newspaper 6 E Main Danville	745-2777

South Side Spotlight
"The Heartbeat of the South Side"
Suburban Coverage in Perry Township
17,500 Notarized Circulation
1469 S Meridian 631-3402

Speedway Flyer The 5217 W 15 244-1756

State Official The 31 E Georgia Room 217 783-0117

State Union Labor The 203 N. Walcott 636-7981

Stewart Geo P Printing Co Inc
401 W Michigan 636-1670

Suburban & Lawrence Journal
8010 E 46 545-1316

Suburban Topics The 6216 N College Av 253-1641

Topics Newspapers
- The North Side Topics
- The Suburban Topics
- The North East Topics

6216 N College Av 253-1641

Union Inc The 241 E Ohio Rm 208 638-9233

Union Labor News
5425 N College Av Rm 203 251-2520

West Side Community News
4400 W Washington 241-7363

West Side Messenger 2915 W 16 632-7423

Western Newspaper Publishing
Co 542 S Meridian 636-4122

Zionsville Times The
70 E Cedar (Zionsvl) 873-3301

RESPONDENT'S EXHIBIT 3

T. Dodson Halcomb
P. O. Box 38
Beech Grove, Ind. 46107
Phone 784-4864

July 1, 1968

Mr. Max Hagerman
Central Hardware
West 38th St. & Lafayette Rd.
Indianapolis, Indiana

Dear Mr. Hagerman:

This letter is very personal. I do not choose to be contacted at my home by union representatives in person, neither do I choose for them to call me on an unlisted telephone. I've been forced to buy two automobile tires, which someone was responsible for the cuts on the tires. Someone in your office had to give the union my telephone number and address and I had the flat tires right after leaving work. I'm sure there is some one in your office or organization who has access to the personnel applications or their home addresses in some manner.

Neither do I wish to discuss union matters with male or female personnel employed by Central Hardware while I'm on duty. It makes me a wee bit angry, and I'm sure it would do you likewise.

I would appreciate any help you may suggest to me in private.

Appreciatively yours

/s/ T. Dodson Halcomb
T. Dodson Halcomb

RESPONDENT'S EXHIBIT 4

June 19, 1968

To All Interested Parties:

I feel that it should be brought to your attention that members of the union are bringing unfair advance toward the members of this Co.

They are threatening with higher initiation fee.

They are going from person to person with false statements.

Marie Dixon
Rebecca Eldridge
Betty Burcham
Michael Ferguson
(Other Names illegible)

RESPONDENT'S EXHIBIT 5

Friday, June 14, 1968

Thursday, June 13, 1968, a man from the Union approached another girl and myself on the parking lot of our East store and talked to us about joining the Union. We told him that we were not interested but he followed us to the White Castle and sat down and ate lunch with us, talking all the while. He first told us all the benefits he felt the union had to offer. We asked questions which he could not answer and then he became annoyed. He said the Union had 4 people in the store working at this time and that he himself had worked at the West store. He said he had watched me all morning, and knew I worked in the office and had access to the company employee files and that he would make it well worth my while to give him the names, addresses, and phone numbers of all the employees of this store. I refused and then he told my girl friend and that if we tryed to discouraged the union that perhaps when the Union did get in the store there could be a billing error and that instead of charging us $4.50 a month, we could be charged $40.50. Then we got up and started to leave and he walked us back to the store. On the way he asked us not to point him out to anyone because it would not be appreciated. When we reached the store, I came straight into the office and told Mr. Kaptain and Mr. Gerland.

Rebecca J. Eldridge

RESPONDENT'S EXHIBIT 6

While punching out I was told if I didn't join the union I would be one of the first to leave the store as they could remember faces and names. This statement was made by Ed. Stahl.

Helen Bonanno

RESPONDENT'S EXHIBIT 7

I was approached by a Union man in our Central Hardware store who handed me a card and told me that I should sign it, because everyone else was. I had just been working two days and was unaware of his intentions at the time. I am perfectly happy with my job and with the people that I work for. I'm looking for a future in business, not trouble.

Larry Hacker 6-13-67

RESPONDENT'S EXHIBIT 8

6-14-68

I, Cora Molin was stopped on the parking lot of Central Hardware west by Ed. Stahl and another of the union men and was told if I didn't sign for the union that I would loose my job and he, Ed. Stahl, would see to it.

• sign
Cora Molin

In the United States Court of Appeals
for the Eighth Circuit

Central Hardware Company,
Petitioner,
vs.
National Labor Relations Board,
Respondent.

No. 20199

PETITION FOR REVIEW

(Filed March 12, 1970)

The Honorable Judges of the United States Court of Appeals for the Eighth Circuit:

Central Hardware Company, Petitioner, hereby petitions this Honorable Court to review and set aside a final order of the National Labor Relations Board dated March 4, 1970, by which Petitioner is aggrieved and its interests adversely affected, in a proceeding appearing and designated on the records of the said Board as Cases

No. 25-CA-3214 and 25-CA-3261 and reported as 181 NLRB No. 74.

In support of this Petition your Petitioner respectfully shows to this Court:

1. After due proceedings before the Board pursuant to Section 10(b) and (c) of the National Labor Relations Act as amended, the Board found that Petitioner had violated Section 8(a)(1) of the Act and Section 8(a) (3) of the Act.

2. This Court has jurisdiction over this action and the parties hereto under the provisions of Section 10(f) of the National Labor Relations Act and venue is in this Court by virtue of Petitioner being a Missouri corporation with its principal place of business in St. Louis, Missouri, its Registered Agent in St. Louis, Missouri, and by conducting the major portion of its business in the State of Missouri, all in the Eighth Circuit.

Wherefore, Petitioner respectfully prays that the order of the Board be stayed, set aside and vacated and that Petitioner may be afforded such further relief as may be adjudged proper.

Dated this 12th day of March, 1970.

RONALD L. AYLWARD
KEITH E. MATTERN
JOHN F. GILLESPIE
Attorneys for Petitioner
1509 Washington Avenue
St. Louis, Missouri
CH. 1-5045

In the United States Court of Appeals
for the Eighth Circuit

Central Hardware Company, Petitioner, vs. National Labor Relations Board, Respondent.	No. 20199

CROSS-APPLICATION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

(Filed April 20, 1970)

To the Honorable, the Judges of the United States Court of Appeals for the Eighth Circuit:

On March 12, 1970, pursuant to Section 10(*f*) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U. S. C., Sec. 151, et seq.), Central Hardware Company, instituted the captioned proceeding by filing with this Court a petition to review and set aside an order issued against it by the National Labor Relations Board on March 4, 1970 in a case appearing on the records of the Board as Case Nos. 25-CA-3214 and 25-CA-[illegible].

Pursuant to Section 10(f) of the Act and Section 15(b) of the Federal Rules of Appellate Procedure, the Board files this cross-application for enforcement of said order.

In support of this cross-application, the Board respectfully shows:

(1) The Petitioner is engaged in business within this judicial circuit. This Court therefore has jurisdiction of

this cross-application for enforcement by virtue of Section 10(f) of the National Labor Relations Act, as amended.

(2) Upon due proceedings had before the Board in said matter, the Board on March 4, 1970, duly stated its findings of fact and conclusions of law, and issued an Order directed to the Petitioner, its officers, agents, successors, and assigns. On the same date, the Board's Decision and Order was served upon the Petitioner by sending a copy thereof postpaid, bearing Government frank, by registered mail, to the Petitioner.

(3) Pursuant to Section 10(f) of the National Labor Relations Act, as amended, and Rule 17 of the Federal Rules of Appellate Procedure, the Board is certifying and filing with this Court a list of documents, pleadings, and materials comprising the entire record of the proceeding before the Board as well as the findings and order of the Board in Case Nos. 25-CA-3214 and 25-CA-3261.

Wherefore, the Board prays this Honorable Court that it cause notice of the filing of this cross-application and transcript to be served upon the Petitioner and that this Court take jurisdiction of the proceeding and of the questions determined therein and make and enter upon the pleadings, testimony and evidence, and the proceedings set forth in the transcript and upon the Order made thereupon a judgment enforcing in whole said Order of the Board, and requiring the Petitioner, its officers, agents, successors, and assigns to comply therewith.

/s/ MARCEL MALLET-PREVOST
MARCEL MALLET-PREVOST
Assistant General Counsel
National Labor Relations Board

Dated at Washington, D. C. this 17th day of April, 1970.